

13
(21,889 and 21,890)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1909.

No. 663.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

No. 664.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY
ET AL., APPELLANTS,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print
Caption.....	<i>a</i>	1
Placita.....	<i>b</i>	1
Bill of complaint.....	1	2
Exhibit A—Petition to Interstate Commerce Commission.....	23	14
B—Report of the Commission.....	35	21
C—Intervening petition of Illinois Central R. R. Co. <i>et al.</i>	57	35

	Original.	Print
Chancery subpoena and marshal's return thereon endorsed.....	74	44
Appearance of Interstate Commerce Commission.....	77	45
Expediting certificate of Attorney General.....	79	46
Answer of Interstate Commerce Commission.....	82	47
Order of October 30, 1908: Cause set for hearing, etc.....	131	70
Order of October 31, 1908: Cause taken under advisement.....	133	70
Opinion rendered November 6, 1908.....	135	71
Restraining order of November 6, 1908.....	140	73
Order of November 6, 1908: Leave given certain parties to file intervening petition.....	145	75
Intervening petition of Illinois Central R. R. <i>et al.</i>	147	76
Exhibit A—Intervening petition before the Interstate Commerce Commission.....	169	88
Replication.....	188	97
Order of December 1, 1908: Leave given to file intervening petition of Burnham, Hanna, Munger Dry Goods Co. <i>et al.</i>	191	98
Intervening petition of Burnham, Hanna, Munger Dry Goods Co..	196	101
Answer of defendant to petition of Illinois Central R. R.....	217	111
Motion to dissolve restraining order.....	226	114
Order of April 20, 1909, overruling motion.....	228	115
Order of April 20, 1909: Leave given A. J. Lindemann <i>et al.</i> to file intervening petition.....	230	116
Intervening petition of A. J. Lindemann <i>et al.</i>	232	116
Evidence taken before special examiner, together with exhibits....	245	121
Testimony of Henry Eicke.....	246	122
Frank L. Johnson.....	274	135
J. M. Johnson.....	312	154
George H. Crosby.....	395	192
Frank P. Eyman.....	423	206
William S. Kallman.....	474	230
Complainant's Exhibit B—Joint through freight tariff W. T. L. No. 786.....	478	cp. 230
Testimony of Henry Clay Martin.....	493	234
Henry Kirk White, Jr.....	500	237
John L. Evans.....	532	253
Chester J. McPherson.....	556	265
J. E. Taussig.....	602	287
Exhibit C—Statement of merchandise loading to Kansas City <i>et al.</i>	605½	289
Testimony of George W. Simmons.....	628	300
Robert H. Whitelaw.....	650	312
Jackson Johnson.....	671	322
Geo. W. Simmons (recalled).....	684	329
J. E. Taussig (recalled).....	688	330
Arthur Hawxhurst.....	729	350
Exhibit D—Argument in support of intervening petition of the Chicago Association of Commerce.....	767	370
Testimony of Albert G. Jones.....	782	378
Lewis B. Boswell.....	813	394
Edward B. Boyd.....	861	419
Exhibit F—Western classification committee—comparison of ratings.....	893a	435
Exhibit G—Table of rates.....	896	436

INDEX.

III

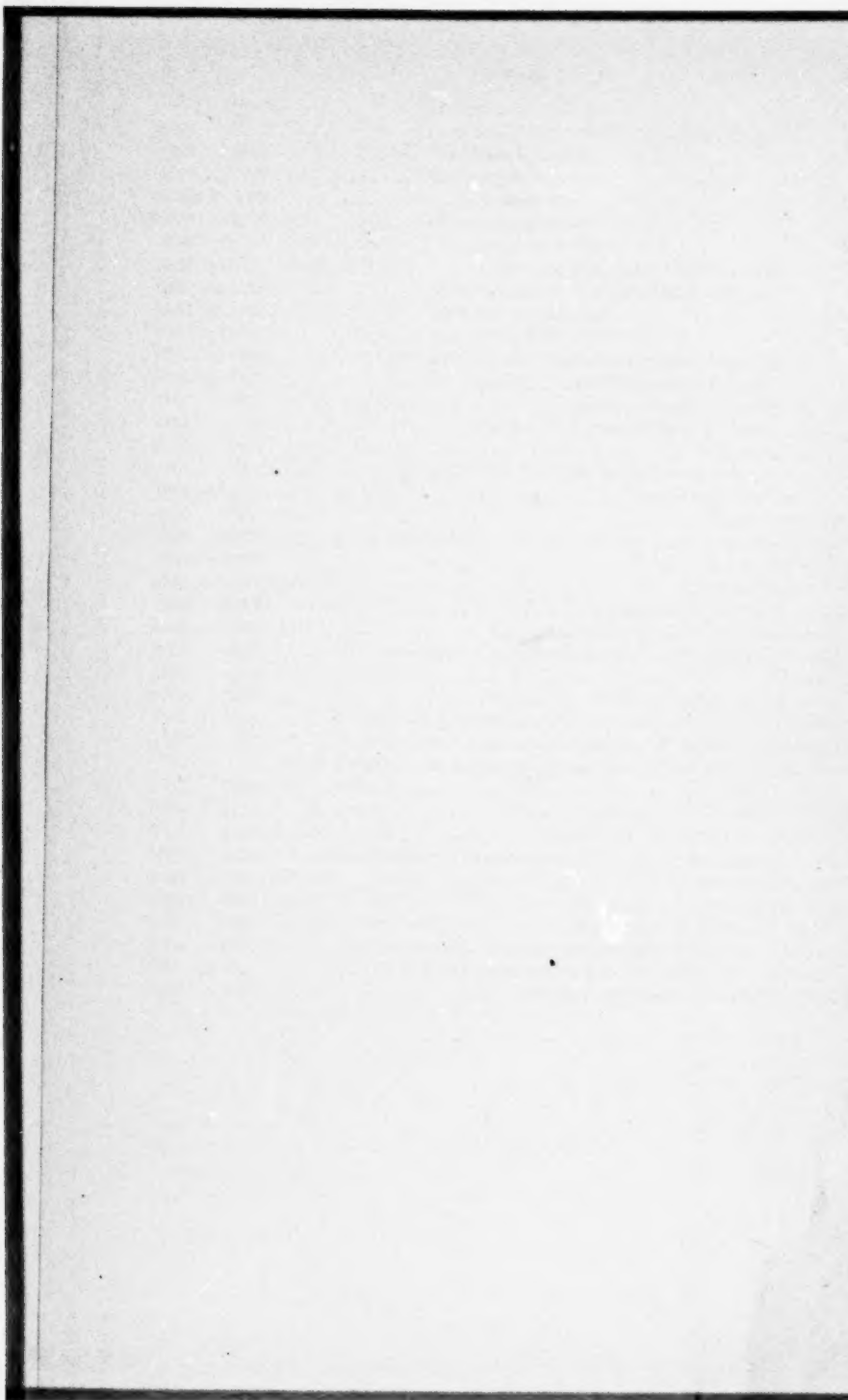
	Original.	Print
Testimony of Edward J. McVann.....	967	470
Defendant Intervenor's Exhibit 1—Table showing that existing through rates from New York to Chicago and St. Louis or Mississippi crossings are a greater discrimination against intermediate points and in favor of Chicago and St. Louis than the new rates would be against them.....	984	478
Defendant Intervenor's Exhibit 2—Blue-print map.....	997	op. 484
Defendant Intervenor's Exhibit 3—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1009	490
Defendant Intervenor's Exhibit 4—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1018	495
Defendant Intervenor's Exhibit 5—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1026	499
Defendant Intervenor's Exhibit 6—Table showing articles and through rates thereon from Pacific coast terminals, &c.....	1034	504
Defendant Intervenor's Exhibit 7—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1040	507
Defendant Intervenor's Exhibit 8—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1043	509
Defendant Intervenor's Exhibit 9—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1045	511
Defendant Intervenor's Exhibit 10—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1047	513
Defendant Intervenor's Exhibit 11—Table showing articles and rates thereon from Pacific coast terminals, &c.....	1049	515
Defendant Intervenor's Exhibit 12—Table showing articles and through rates thereon from Pacific coast terminals, &c.....	1055	518
Defendant Intervenor's Exhibit 13—Table showing rates on fibre can material, &c.....	1066	524
Testimony of Frank J. Hoel.....	1108	544
Defendant Intervenor's Exhibit 14—Freight classification..	1125	552
Testimony of Charles F. Weller.....	1135	558
Richard A. W. Nugent.....	1151	565
William James Culley.....	1162	571
Thomas B. Campbell.....	1168	574
Maxwell G. Davis.....	1196	587
J. A. Warner.....	1210	593
John H. Hillman.....	1224	601
Seymour S. Mack.....	1245	611
William H. Gomersall.....	1259	619
Albert D. Morstadt.....	1283	630
John Shann.....	1290	633
Charles H. Jones.....	1312	643
Defendant Intervenor's Exhibit 15—Table of data taken from United States Census Reports of 1900, &c.....	1348	660
Defendant Intervenor's Exhibit 16—Table of data taken from reports of United States Department of Agriculture.....	1353	662
Defendant Intervenor's Exhibit 17—Table of data taken from United States Census Bulletins showing domestic business, &c.....	1358	664

	Original.	Print.
Defendant Intervenor's Exhibit 18—Data taken from the annual report of the Chicago Board of Trade for 1907.....	1360	665
Defendants rest.....	1364	667
Testimony of Edward B. Boyd (recalled).....	1365	667
Exhibit H—C., B. & Q. R. R. Co. through rates on class traffic compared.....	1377	673
I—C., R. I. & P. Ry. Co. through rates on class traffic compared.....	1381	679
J—C., M. & St. P. Ry. Co. through rates on class traffic compared.....	1387	688
K—C. & N. W. Ry. Co. through rates on class traffic compared.....	1390	691
L—C. G. W. Ry. Co. through rates on class traffic compared.....	1392	694
M—Illinois Central R. R. Co. through rates on class traffic compared.....	1395	698
N—Map.....	1399	op. 701
Evidence taken before the Interstate Commerce Commission...	1440	721
Appearances, &c.....	1441	721
Statements of counsel.....	1443	722
Testimony of Thomas C. Byrne.....	1468	731
Arthur C. Smith.....	1523	752
E. J. McVann.....	1544	760
George T. Bell.....	1642	797
J. D. Davison.....	1671	808
E. J. McVann (recalled),.....	1684	813
W. E. Tackaberry.....	1752	838
W. B. Biddle.....	1788	851
W. L. Martin.....	1854	875
H. M. Pearce.....	1886	887
H. M. Hundley.....	1908	895
George H. Crosby.....	1909	917
George I. Sturgis.....	2017	935
George H. Crosby (recalled).....	2031	940
Edward J. Seymour.....	2082	959
D. M. McGeen.....	2096	964
H. C. Barlow.....	2101	965
H. E. White.....	2122	973
Answer of Chicago Great Western Ry. Co.....	2140	979
N. Y. C. & H. R. R. R. Co. <i>et al.</i>	2144	982
Chicago & N. W. Ry. Co.....	2151	986
C., B. & Q. Ry. Co.....	2157	990
C., R. I. & P. Ry. Co.....	2161	992
Amendment to answer of C. & N. W. Ry. Co.....	2165	995
Rates from Atlantic Seaboard and other points west to Missouri river points.....	2168	997
Exhibit B—Equalization of rates from New York, &c., to Kansas City, &c.....	2170	999
Exhibit No. 1 (McGeen)—Statement.....	2171	1001
1 (Barlow)—Statement.....	2172	1002
1 (Martin)—Statement.....	2173	1002
2 (White)—Statement.....	2174	1003

INDEX.

V

	Original.	Print
Complainant's Exhibit 1—Statement.....	2175	1004
3—Statement.....	2178	1006
4—Statement.....	2183	1008
6—Statement.....	2205	1019
7—Statement.....	2212	1022
8—Statement.....	2251	1036
Exhibit 1 (White)—Blue-print map.....	2262 op.	1040
Complainant's Exhibit 2—Blue-print map.....	2263 op.	1040
A 5—Blue-print map.....	2264 op.	1040
5 B—Blue-print map.....	2265 op.	1040
Statement offered in argument of Mr. Atwood.....	2265a op.	1040
Special statement No. 53.....	2266 op.	1040
Complainant objects to evidence.....	2267	1041
Stipulations as to pleadings, &c.....	2267	1041
All parties rest.....	2268	1041
Certificate of special examiner.....	2269	1041
Large blue-print map.....	2270 op.	1041
Key to map.....	2271	1042
Motion to dismiss.....	2275	1043
Motion to dismiss.....	2278	1044
Motion to dismiss.....	2281	1046
Motion to strike out evidence.....	2284	1047
Motion to adopt certain propositions of law.....	2287	1048
Order of June 23, 1909: Cause taken under advisement.....	2294	1052
Opinion.....	2296	1053
Decree of September 13, 1909.....	2297	1068
Petition for appeal by Interstate Commerce Commission.....	2302	1071
Assignment of errors by Interstate Commerce Commission.....	2305	1072
Order of September 13, 1909, allowing appeal of Interstate Commerce Commission.....	2310	1075
Petition for appeal by intervenors.....	2313	1076
Assignment of errors by intervenors.....	2318	1079
Order of September 13, 1909, allowing appeal of intervenors.....	2324	1083
Præcipe for record.....	2325	1084
Clerk's certificate.....	2327	1085
Citation on appeal of intervenors.....	2328	1086
Citation on appeal of Interstate Commerce Commission.....	2332	1088
Exhibit A to testimony before Commission—Tariff.....	2337 op.	1090
Clerk's certificate to foregoing exhibit.....	2376	1091



- a In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29247.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

vs.

INTERSTATE COMMERCE COMMISSION et al.

Mr. William D. McHugh, Mr. Colin C. H. Fyffe, solicitors for Complainants.

Mr. Edwin W. Sims, Mr. Luther M. Walter, Solicitors for Interstate Commerce Commission.

Mr. John L. Webster, Mr. John H. Atwood, Solicitors for Co-Defendant Intervenors.

- b Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in Chancery Sitting, at the United States Court Room in the City of Chicago, in said District and Division, Before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaat, Circuit Judges of the United States for the Seventh Judicial Circuit, on Monday the Thirteenth Day of September, Being One of the Days of the Regular July Term of said Court, Begun Monday the Fifth Day of July, in the Year of Our Lord One Thousand Nine Hundred and Nine and of Our Independence the One Hundred and Thirty-fourth.

H. S. STODDARD, *Clerk*.

- c In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, CHICAGO, Burlington and Quincy Railroad Company, Chicago, Milwaukee and St. Paul Railway Company, Chicago and Northwestern Railway Company, Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, and Chicago Great Western Railway Company

vs.

THE INTERSTATE COMMERCE COMMISSION.

Be it remembered that on this day to-wit: the 17th day of October, 1908, come the complainants in the above entitled cause, by their solicitors, and filed in the Clerk's office of said court their certain bill of complaint in words and figures following to-wit:

1

Bill of Complaint.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States for the Northern District
of Illinois, Eastern Division.

To the Honorable the Judges of the Circuit Court of the United
States Within and for the Northern District of Illinois, Eastern
Division, in Chancery Sitting:

Humbly complaining, your orators, The Chicago, Rock Island &
Pacific Railway Company, a corporation organized and existing un-
der and by virtue of the laws of the States of Illinois and Iowa,
Chicago, Burlington & Quincy Railroad Company, a corporation
organized and existing under and by virtue of the laws of the State
of Illinois, Chicago, Milwaukee & St. Paul Railway Company, a
corporation organized and existing under and by virtue of the laws
of the State of Wisconsin, Chicago & Northwestern Railway Com-
pany, a corporation organized and existing under and by virtue of
the laws of the State of Illinois, Alpheus B. Stickney and Charles
H. F. Smith, receivers of Chicago Great Western Railway Company,
and Chicago Great Western Railway Company, a corporation or-
ganized and existing under and by virtue of the laws of the State
of Illinois, show unto your Honors that The Chicago, Rock Island
& Pacific Railway Company is a corporation organized and existing
under and by virtue of the laws of the States of Illinois and Iowa,

Chicago, Burlington & Quincy Railroad Company is a cor-
2 poration organized and existing under and by virtue of the
laws of the State of Illinois, Chicago, Milwaukee & St. Paul
Railway Company is a corporation organized and existing under
and by virtue of the laws of the State of Wisconsin, Chicago & North-
western Railway Company is a corporation organized and existing
under and by virtue of the laws of the State of Illinois, Chicago
Great Western Railway Company is a corporation organized and
existing under and by virtue of the laws of the State of Illinois,
and Alpheus B. Stickney and Charles H. F. Smith are receivers of
Chicago Great Western Railway Company, duly appointed as such
receivers by the Circuit Court of the United States within and for
the District of Minnesota, in a certain cause wherein John A. Hum-
bird and others were complainants and Chicago Great Western Rail-
way Company was defendant, and that they duly qualified as such
receivers and are now, as such receivers, in possession of the rail-
way and properties of the said Chicago Great Western Railway
Company, and are now operating the same as such receivers; that
the Interstate Commerce Commission, hereinafter made defendant
hereto, has been created and established and during all the times
herein mentioned, has existed under and by virtue of an Act of
Congress of the United States entitled "An Act to Regulate Com-
merce," approved February 4, 1887, and the Acts amendatory thereof
and supplemental thereto.

Your orators further aver that your orators, The Chicago, Rock Island & Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago & Northwestern Railway Company and Chicago, Milwaukee & St. Paul Railway Company have their principal operating offices in the city of Chicago, in the Northern District of Illinois and in the Eastern Division thereof.

3 Your orators further aver that your orators are common carriers, engaged in the transportation of property by railroad by continuous carriage or shipment, from the City of Chicago aforesaid as an eastern terminus, to the cities of St. Paul and Minneapolis hereinafter referred to as The Twin Cities, and to points beyond said cities, and to the several Mississippi River crossings hereinafter mentioned, and from said Mississippi River crossings to various points upon the Missouri River, including Kansas City and St. Joseph, Missouri, Omaha, Nebraska, and Sioux City, Iowa, hereinafter referred to as the Missouri River cities, and to points west, southwest and northwest of the said last named cities.

Your orators further aver that the City of St. Louis, in the State of Missouri, is located upon the Mississippi River; that various railroad companies own and operate lines of railroad extending from cities upon the Atlantic Coast in the United States, to the said City of St. Louis; that various railroad companies own and operate lines of railroad extending from the City of St. Louis westward, southward and northwestward from said city, and extending from the said City of St. Louis to the said Missouri River cities, and extending beyond the said Missouri River cities to points west, northwest and southwest thereof.

Your orators further aver that none of the lines of the said railroad companies which reach from the Atlantic Seaboard to the City of St. Louis or the City of Chicago extends west of the Mississippi River or west of the City of Chicago; that none of the lines of railroad which operate west of the City of St. Louis and west of the Mississippi River extends east of the City of St. Louis or the City of Chicago to the Atlantic Seaboard; that your orator, Chicago, Burlington & Quincy Railroad Company, owns and operates a
4 line of railroad from the City of St. Louis westward to several of the Missouri River cities hereinafter mentioned.

Your orators further aver that there have been adopted and are now in force two classifications of freight, upon which classifications the tariff rates for the transportation of merchandise are based; that one of said classifications, known as the Official Classification, is effective from the Atlantic Coast to the City of St. Louis, by reason of the fact, as above set forth, that lines of railroad extend and are operated from the said Atlantic Coast to the said City of St. Louis; that west of the City of St. Louis and between the said City of St. Louis and the said Missouri River cities, there is in force and effect a classification of freight known as the Western Classification; that the said Western Classification and Eastern Classification differ in many respects and differ in that certain kinds of merchandise are in one classification placed in one class, while in the other classification the same kinds of merchandise are placed in another

class; and the rates charged for transportation in the tariffs of your orators are based upon the classes as arranged in said classifications.

Your orators further aver that various railroad companies have lines of railroad extending from the Atlantic Coast westward to the City of Chicago, many of which companies do not have lines reaching to the City of St. Louis, and that the lines of railroad of your orators extend as aforesaid from the said City of Chicago westward to the said Mississippi River and westward between the said Mississippi River and the Missouri River and to points west of the said Missouri River.

Your orators further aver that by reason of the fact that the said Official Classification is in force and applies to all transportation of merchandise to the Mississippi River at St. Louis from all
 5 eastern points, the companies whose rails extend from the Atlantic Coast to the City of Chicago aforesaid and your orators, are compelled, in order to equalize the rates for the transportation of merchandise from points on the Atlantic Coast to the Missouri River cities herein mentioned, to apply the Official Classification and the St. Louis rates as far as the Mississippi River, to the transportation of all such merchandise transported from the Atlantic Coast.

Your orators further aver that the tracks of said The Chicago, Rock Island and Pacific Railway Company cross the Mississippi River at the City of Rock Island; that the tracks of said Chicago Great Western Railway Company and the receivers thereof, cross the Mississippi River at the City of Dubuque; that the tracks of said Chicago, Burlington & Quincy Railroad Company cross the Mississippi River at the City of Burlington and also at the City of Hannibal; that the tracks of said Chicago, Milwaukee & St. Paul Railway Company cross the Mississippi River at the City of Savanna; that the tracks of said Chicago & Northwestern Railway Company cross the Mississippi River at the City of Clinton; and that the said points are hereinafter referred to as the Mississippi River crossings.

Your orators further aver that upon all transportation of merchandise between the City of St. Louis and any of the other said Mississippi River crossings and the said Missouri River points, the said Western Classification applies and the rates of your orators for the said transportation are fixed with reference to the said Western Classification.

Your orators further aver that your orators have adopted and have filed, published and posted, in all respects in accordance with law, tariffs showing the charges of your orators for the transportation
 6 of merchandise between all of the said points on the Mississippi River and the said Missouri River points, which said charges are as follows, in cents per 100 pounds for the five classes of merchandise as fixed by said Western classification as follows:

1	2	3	4	5
<hr/> 60	<hr/> 45	<hr/> 35	<hr/> 27	<hr/> 22

Your orators further aver that the said rates and charges for the transportation of merchandise between the points on the Mississippi River aforesaid and the said Missouri River points were not established by your orators as a part of joint through rates, and were not established by your orators to be specially applied to through transportation of merchandise from points on the Atlantic Coast to the said Missouri River points, but on the contrary, your orators aver that the said rates were established by your orators for the transportation of all merchandise carried by your orators between said points, regardless of the point of origin of such shipments.

Your orators further aver that the said rates so established are just and reasonable, and the same yield to your orators only a fair and proper return for the service involved in said transportation.

Your orators further aver that all merchandise delivered to your orators at the Mississippi River points or in the City of Chicago for transportation between the said Mississippi River crossings and said Missouri River cities is delivered to your orators either by team at the freight depots of your orators or by the carload at various industries upon the sidetracks of your orators; that all merchandise delivered to your orators for transportation between said Mississippi River crossings and said Missouri River cities which is in the course of through shipments from Atlantic Coast cities is delivered to your orators either by team to the freight depots of your orators or by car, switched to the freight depots of your orators

7 from eastern lines. Your orators aver that in all cases the expense to your orators of handling merchandise delivered to them at the Mississippi River points or at the City of Chicago to be transported between said Mississippi River crossings and said Missouri River cities is not more, and in many instances much less than the expense to your orators of handling an equal amount of like merchandise delivered to your orators by eastern lines, to be transported between said Mississippi River crossings and said Missouri River cities. And your orators aver that the total cost to your orators of handling and transporting merchandise between said Mississippi River crossings and said Missouri River cities is not more, and in many instances much less, in the case of merchandise delivered to your orators at said Mississippi River points or the City of Chicago than it is in the case of an equal amount of like merchandise delivered to your orators by eastern lines in the course of transportation from the Atlantic seaboard to the said Missouri River cities.

Your orators further aver that on or about the 11th day of February, A. D. 1907, a complaint was filed in the office of said Interstate Commerce Commission at Washington, D. C., by the Burnham, Hanna, Munger Dry Goods Company, a corporation, and others, as complainants, a copy of which complaint is hereto attached, marked Exhibit A, and your orators pray that the same may be taken as a part hereof; that the said complaint named as defendants the following railroad companies: The Chicago, Rock Island & Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Northwestern Railway Company, your orators, and Chicago Great Western Railway Company; that thereafter in due time, answers were filed by said defendants to said complaint

and various eastern railroads were made parties defendant to said proceeding, but that said eastern railroads, although appearing at the hearing had on said complaint, introduced no evidence as such defendants and were dismissed out of said proceeding by order of said Commission hereinafter set forth. After the filing of the answers above referred to, hearings were had upon said complaint, and thereupon the said Commission rendered its opinion and entered its final order in the premises on June 24, 1908.

Your orators further aver that thereafter, by orders duly entered by said Interstate Commerce Commission, the time for the compliance by your orators, defendants before the said Interstate Commerce Commission, with the above mentioned order of June 24, 1908, was duly and regularly extended until the 26th day of October, A. D. 1908. Your orators annex hereto a copy of the said opinion of the said Commission in the said cause rendered on June 24, 1908, as Exhibit B to this, your orators' bill of complaint, and pray that the same may be taken as a part thereof.

Your orators further show unto your Honors that the said order so entered by the said defendant, the Interstate Commerce Commission, on June 24, 1908, was in words and figures as follows, to wit:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission having, on the date hereof, made and filed a report containing its conclusions thereon;

"It is ordered, That the defendants, The Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company be and they severally are hereby notified and required to cease and desist on or before the 25th day of August, 1908, from charging, demanding, collecting or receiving for the transportation of property between the Mississippi River crossings, East St. Louis to East Dubuque, Ill., inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, or at other points of origin, as specified on pages 3 and 4 of Western Trunk Line Tariff, No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, their separately established class rates now in effect between said Mississippi River crossings and said Missouri River cities, which are in cents per hundred pounds as follows:

Classes	1	2	3	4	5
Rates	60	45	35	27	22

And to also cease and desist, on or before said 25th day of August, 1908, from charging, demanding or receiving the above named rates for the transportation of property between the Mississippi River cross-

ing, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, when moving under class rates and when from above described points of origin and destined to Sioux City, Iowa.

It is further ordered, That said defendants, The Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company; and the Chicago Great Western Railway Company, be, and they severally are hereby notified and required to establish and put in force, on or before the said 25th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of property between Mississippi River crossings, East St. Louis to East Dubuque, Ill., inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, taking New York as representative, or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, class rates in cents per 100 pounds not in excess of the following scale, to wit:

Classes	1	2	3	4	5
Rates	51	38	30	23	19

It is further ordered, That the rates herein established shall be applied to the transportation of property moving under class rates between Mississippi River crossings, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, and points taking the same rates, as parts of the through class rates, on through shipments originating at Atlantic seaboard points, or at other points of origin as specified on pages 3 and 4 of said Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, when destined to Sioux City, Iowa, or to points taking the same rates.

It is further ordered, That said defendants be, and they are severally hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the said 25th day of August, 1908. The tariffs in which the rates are given must contain the notation that they are issued under the authority hereby granted, and must refer to the title and number of this case.

And it is further ordered, That as to all the other defendants herein, the complaint in this proceeding be, and it is hereby dismissed.

Your orators further show unto your Honors that the reduction in the rates now charged and received by your orators so compelled and enforced by said order above set forth, will reduce the revenues of your orators more than five hundred thousand dollars annually.

11 Your orators further aver that if the said order goes into force and effect, the application of the principle therein contained will necessarily result in the further lowering of other rates now duly received by your orators to a very much greater extent; that the amount of such resultant reduction affected by the application of the general principle of said order your orators are unable to exactly estimate; but your orators allege and so state the fact to be that the actual loss of revenue compelled by said order above set forth, together with the loss of revenue arising by reason of the application of the general principle of said order to other rates and charges now duly existing, not in terms specified in said order, will reduce the revenues of your orators millions of dollars annually.

Your orators further aver, and so allege the fact to be, that said order of June 24, 1908, above set forth, so entered by said Interstate Commerce Commission is unreasonable, unjust, oppressive and unlawful, in excess of the powers conferred on said defendant by said Act to Regulate Commerce, and in violation of the Constitution of the United States and more particularly in violation of the Fifth Amendment thereof, in that, among other things, the said order prevents your orators from charging, as aforesaid, their reasonable and just rates and charges, for the services so rendered as aforesaid by your orators, that said order takes the property of your orators without due process of law, and that the said order compels your orators to accept for the transportation of property as aforesaid, rates and charges which are not reasonable and fair returns for the services so rendered by your orators.

Your orators further show unto your Honors that the complaint before said Interstate Commerce Commission as a result of which said order aforesaid was made was brought on the theory that the rates to the said Missouri River cities were too high in comparison with the rates to said Twin Cities, and thereby produced undue discrimination against said Missouri River cities, in favor of said Twin Cities; that the only evidence offered by said complainants before said Commission were comparisons of the proportions received by your orators of the through rates to said Missouri River cities as against proportions received by your orators of through rates from the Atlantic seaboard to said Twin Cities, proportions received by your orators of through rates on transcontinental traffic, and proportions received by your orators of through rates from the Atlantic seaboard to southwestern points, such as El Paso, Texas. That your orators, defendants on said hearing, offered evidence tending to show that all the rates in comparison with which the rates to said Missouri River cities were claimed to be unreasonably high, were fixed by the effect of water on rail competition, which competition did not and could not affect the rates to said Missouri River cities. Your orators further allege unto your Honors that said cause before said Commission was tried upon the issue so raised.

Your orators further aver that the rates above named of necessity are as aforesaid the same between each of the said Mississippi River crossings and each of the said Missouri River cities; that the rate between St. Louis, upon the Mississippi River, and Kansas City,

upon the Missouri River being the rate above mentioned, is the rate which has been fixed and established by the Railroad Commission of the State of Missouri for said service; that said rate for transportation between said point on the Mississippi River and said point on the Missouri River was fixed by said Railroad Commission of the

State of Missouri in a due proceeding had for that purpose.

13 Your orators further show unto your Honors that the said order compels your orators to lower their rates between the Mississippi River crossings and the said Missouri River cities on the theory that the same are parts of through class rates on through shipments to said Missouri River cities from the Atlantic seaboard; that said order refers only to through shipments; that the service of performing such through carriage is made up of two factors, the carriage by the Eastern lines and the carriage by your orators from their terminals to the point of destination; that said order reduces the so-called through rates as now made up and compels new through rates in place thereof by reducing alone the proportions of such through rates to be received by your orators; that said order in no wise affects or changes the proportions of said through rates to be received by said Eastern carriers. Your orators allege and so state the fact to be that there was no allegation in said complaint, Exhibit A hereto, that said proportions of the present so-called through rate so received by said Eastern carriers was reasonable and just, and that there was no evidence introduced at the hearing aforesaid before said Commission tending to show that said proportions were reasonable, just and proper, and your orators allege that said order is in such respects unreasonable, unjust, unlawful and discriminatory against your orators and will operate as a taking of the property of your orators without due process of law.

Your orators further show unto your Honors that under and by virtue of said Act to Regulate Commerce, as amended, the said Interstate Commerce Commission may establish through routes and joint rates after hearing on a complaint, and may also make a supplemental order on said complaint prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, only when the carriers participating in such through haul fail to agree among themselves upon the apportionment and division of such joint rate. Your orators show unto your Honors that the rates sought to be established by said order are in effect through, joint rates, the charge to be divided among two or more carriers, each participating in the through haul. Your orators allege that on said hearing there was no showing or statement made that the carriers participating in the traffic from the Atlantic seaboard to the Missouri River cities would be, or were unable to agree among themselves on the respective proportions of the rate so established by said order. And your orators further show that said order is in no sense a supplemental order, but was the final and only order entered in said hearing. Your orators further show that by said order said Commission in effect established a joint through rate, and that said Commission did not leave to the carriers who were to participate in such joint through rate the deter-

mination of the proportions of such joint through rate to be received by each; but said Commission without investigation or hearing on said question of division of such joint through rate, fixed the proportion to be received by the carriers, so to participate in said rate. And your orators show unto your Honors that in such respects said Commission exceeded the powers conferred upon it by said Act to Regulate Commerce as amended, and is about to deprive your orators of their property without due process of law, in violation of the Constitution of the United States and the Fifth Amendment thereof.

Your orators further show unto your Honors that the rates now charged by your orators for the transportation of merchandise from said Mississippi crossings to said Missouri River cities specified in the first paragraph of said order are just and reasonable rates in and of themselves. Your orators allege and so charge the fact to be that at the hearing aforesaid before said Commission no evidence was offered, heard or introduced tending to show that said rates were unreasonable, unjust or unlawful in and of themselves, save by comparisons with other existing rates more specifically hereinbefore referred to; that no evidence was offered by the complainants at said hearing or heard at said hearing as to the cost of the actual service for which said rates were charged, the value of such service, or as to any of the various elements which are proper to be considered in determining whether or not a given rate is reasonable in and of itself. And your orators show unto your Honors that in such respects the order aforesaid of said Commission is unjust, unlawful, unreasonable, in excess of the authority conferred on said Commission by said Act to Regulate Commerce, as amended, and in violation of the Constitution of the United States and the Fifth Amendment thereof.

Your orators further aver that the said order reducing the said rates of your orators for the transportation of merchandise between said Mississippi River crossings and the said Missouri River cities was not based upon any finding or conclusion of the said Interstate Commerce Commission to the effect that the said rates were unjust or unreasonable in themselves for the service involved in said transportation. Your orators aver that the said Interstate Commerce Commission made no finding or conclusion that the said rates were unreasonable or excessive for the said service of transporting merchandise between said Mississippi River crossings and said Missouri River cities. In this respect, your orators aver that the said Interstate Commerce Commission, in its conclusions in said proceeding, held that the said rates should not be lowered for the transportation of merchandise between the said Mississippi River crossings and said Missouri River cities when the said merchandise so transported was not in course of shipment from the Atlantic seaboard. And your orators aver that the sole and only reason and the sole and only conclusion of the said Interstate Commerce Commission upon which the said reduction was ordered as aforesaid, was because the said Interstate Commerce Commission decided that merchandise shipped from the Atlantic seaboard should be transported by your orators from the Mississippi River crossings

to the Missouri River cities at a lower price and charge than that exacted by your orators for the transportation of an equal amount of like merchandise when the same was shipped from St. Louis or Chicago, or other points west of the Atlantic seaboard. And your orators aver that, inasmuch as the lines of your orators do not reach the Atlantic seaboard, and inasmuch as the transportation over your orators' lines begin at the Mississippi River or the City of Chicago, and inasmuch as the expense to your orators of the transportation of like merchandise is greater in the case of merchandise shipped from the Atlantic seaboard than in the case of merchandise delivered to your orators for shipment at Chicago or St. Louis, the said Interstate Commerce Commission exceeded its authority in ordering that your orators transport merchandise shipped from the Atlantic seaboard at a less rate between the Mississippi River crossings and the Missouri River cities aforesaid than that charged to shippers at Chicago or St. Louis for like transportation, which involves less expense to your orators. And your orators aver that the said order of the said Interstate Commerce Commission misapplies the law and compels your orators to serve a certain class of people, to wit: the shippers at the

17 Atlantic seaboard, at an unreasonably low rate, as hereinabove set forth, and at a rate lower than is charged shippers at Chicago and St. Louis for a like service, which involves to your orators less expense.

Your orators further show unto your Honors that various railroad companies other than your orators own and operate lines of railroad between the Mississippi River crossings and the said Missouri River cities; that said other railroad companies charge for the service of transporting merchandise between the Mississippi River crossings and said Missouri River cities, the same rates charged by your orators as above set forth, for said service; that the said other railroad companies will of necessity be directly affected if the said order of the said Commission goes into effect; that said other railroad companies were not made parties to the said proceedings before the said Interstate Commerce Commission; that after the said order was issued by said Interstate Commerce Commission, the said other railroad companies made formal application to said Interstate Commerce Commission for leave to intervene in said cause and to be made defendants therein, and for an opportunity to be heard, and to introduce evidence, and prove the facts hereinabove averred, and to prove that the said order of the said Commission was in excess of its authority, and in violation of law. A copy of the said petition, so presented to said Interstate Commerce Commission by said railroad companies is hereto attached and marked "Exhibit C" and made a part hereof. But your orators aver that, notwithstanding the facts aforesaid, the said Interstate Commerce Commission refused to allow the said petition of intervention to be filed, and refused to allow the said companies to intervene and introduce any testimony in said proceeding.

18 Your orators further aver that if the said order of the said Interstate Commerce Commission is allowed to become effective, the said large reduction in the revenues of your orators

will be thereby compelled, and your orators will lose annually more than the said sum of five hundred thousand dollars, which said loss will be absolute and irrevocable. And your orators further aver that if the said order shall be allowed to become and be affected, it will necessarily result as above set forth, in the lowering of the rates to be charged by your orators for the transportation of merchandise between said Mississippi River crossings and said Missouri River cities upon all merchandise originating at the Atlantic seaboard, and if the said rates are so lowered it will be extremely difficult for your orators, even if the said order should be finally set aside by the decree of this court herein, to restore the present rates, and as a consequence thereof, the enforcement of said order would result in a great disturbance of the business of your orators, and of each of them, and in a consequent irreparable loss to your orators and each of them.

Your orators further allege that if the said order of the said Interstate Commerce Commission is allowed to become and be affected, very many suits for penalties will be brought against each one of your orators in various of the judicial districts of the United States, and very many suits will be brought against each of your orators by many persons interested in said order and its enforcement and claiming to be injured by the acts of your orators unless said order is obeyed, which said suits will be brought and prosecuted as aforesaid by very many persons in many of the judicial districts of the United States against each of your orators; whereby your orators and each of them will be subject to a great multiplicity of suits, and great loss and damage will be inflicted upon your orators and each of them, all of which acts and doings will greatly injure and

19 embarrass your orators and each of them in the transaction of their business.

Your orators further allege that, notwithstanding the facts aforesaid, the said Interstate Commerce Commission maintains and intends to maintain and will, unless the same is enjoined or suspended by the order of this Honorable Court, maintain the said order as an effective order; and institute or suffer to be instituted the judicial proceedings aforesaid, which acts and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators.

In tender consideration whereof, and for as much as your orators are remediless in the premises at and by the strict rules of the common law and are only relievable in a court of equity where matters of this nature are properly cognizable and relievable.

Your orators, therefore, pray that upon the filing of this bill a temporary or interlocutory order be entered herein, suspending the said order of the said Interstate Commerce Commission and restraining the enforcement of the said order of the said Commission and restraining the said Commission from taking any steps or instituting any proceedings to enforce the said order, and that upon a final hearing of this cause a decree be entered herein, setting aside and annulling the said order of the said Interstate Commerce Commission and perpetually enjoining the said defendant and its members, their

agents, servants and representatives from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of the said order.

Your orators further pray that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order as prayed for herein, an order be issued herein suspending the said order of the said Interstate Commerce Commission and
 20 enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require and as to your Honors may seem meet.

And your orators further pray that your Honors grant unto your orators a writ of subpoena of the United States of America directed to the said Interstate Commerce Commission commanding it at a certain day and under a certain penalty therein to be specified personally to be and appear before your Honors in this Honorable Court, and then and there full, true and complete answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide by such order and decree herein as to your Honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray, etc.

THE CHICAGO, ROCK ISLAND & PACIFIC
 RAILWAY COMPANY,
 CHICAGO, BURLINGTON & QUINCY RAIL-
 ROAD COMPANY,
 CHICAGO, MILWAUKEE & ST. PAUL RAIL-
 WAY COMPANY,
 CHICAGO & NORTHWESTERN RAILWAY
 COMPANY,
 ALPHEUS B. STICKNEY and CHARLES
 H. F. SMITH,

Receivers of Chicago Great Western Railway Company.

By WILLIAM D. MCHUGH and

COLIN C. H. FYFFE,

Solicitors for said Complainants.

WILLIAM D. MCHUGH AND

COLIN C. H. FYFFE,

Of Counsel.

21 & 22 STATE OF ILLINOIS,
County of Cook, ss:

Frank E. Eyman, being first duly sworn, on oath deposes and says that he is the assistant general freight agent of the Chicago & North-western Railway Company, one of the complainants herein; that he has read the said bill of complaint and knows the contents thereof, and that the allegations thereof are true.

FRANK E. EYMAN,

Subscribed and sworn to before me, a notary public, in and for the County of Cook and State of Illinois, this 17th day of October, A. D. 1908.

[NOTARIAL SEAL.]

W. J. COLEMAN,
Notary Public.

23

EXHIBIT A.

Before the Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY, a Corporation; Swofford Brothers Dry Goods Company, a Corporation; Smith-McCord-Townsend Dry Goods Company, a Corporation; William Barton, K. L. Barton and G. A. Barton, Co-partners as Barton Brothers; Maxwell-McClure-Fitts Dry Goods Company, a Corporation; F. A. Faxon and J. A. Gallagher, Co-partners as Faxon & Gallagher; Ellet-Kendall Shoe Company, a Corporation; McPike Drug Company, a Corporation; Evans-Smith Drug Company, a Corporation; Richards & Conover Hardware Company, a Corporation; Woodson Smith Hat Company, a Corporation; Jay & King Hat Company, a Corporation; Townley Metal and Hardware Company, a Corporation; Emery, Bird, Thayer Dry Goods Company, a Corporation; John Taylor Dry Goods Company, a Corporation; George B. Peck Dry Goods Company, a Corporation; Jones Dry Goods Company, a Corporation; Webb-Freyschlag Mercantile Company, a Corporation; Kelly & Williams Druggists' Sundry Company, a Corporation; Baker & Lockwood Manufacturing Company, a Corporation; Campbell Glass and Paint Company, a Corporation; Cutler Paint and Glass Company, a Corporation; Faeth Iron Company, a Corporation; Joseph D. Havens Company, a Corporation; J. W. Jenkins' Sons Music Company, a Corporation; Robert Keith Furniture and Carpet Company, a Corporation; Kansas City Paper House, a Corporation; Kansas City Roofing and Corrugating Company, a Corporation; Ryley-Wilson Company, a Corporation; Ridenour-Baker Grocery Company, a Corporation; Western Grocer Company, a Corporation; Jacoby Furniture Company, a Corporation; G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer, Partners under the Firm Name of G. Bernheimer Brothers & Company; 24 Tootle, Wheeler & Motter Mercantile Company, a Corporation; John S. Brittain Dry Goods Company, a Corporation; Hundley Dry Goods Company, a Corporation; Richardson Dry Goods Company, a Corporation; M. E. Smith & Company, a Corporation; Byrne & Hammer Dry Goods Company, a Corporation; F. P. Kirkendall & Company, a Corporation; American Hand Sewed Shoe Company, a Corporation; Hayward Brothers Shoe Company, a Corporation; D. J. O'Brien Company, a Corporation; Thomas Kilpatrick & Company, a Corporation; H. A. Thompson and C. C. Belden, Co-partners as Thompson, Belden & Company; Orchard & Wilhelm Carpet Company, a Corporation; M. Levy, H. Cohn and M. Strausberger, Co-partners as Nebraska Clothing Com-

pany; Browning, King & Company, a Corporation; Berg-Swanson Company, a Corporation; Miller, Stewart & Beaton Carpet and Furniture Company, a Corporation; E. E. Bruce & Company, a Corporation; The Bennett Company, a Corporation; Hayden Brothers, a Corporation; M. Spiesberger & Son Company, a Corporation; J. L. Brandeis & Sons, a Corporation, Complainants,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY, THE CHICAGO, Burlington & Quincy Railway Company, The Chicago, Milwaukee & St. Paul Railway, The Chicago & Northwestern Railway, The Chicago Great Western Railway, Defendants.

Petition.

The above named complainants respectfully show that the following named corporations are duly organized and existing by virtue of law, having their principal places of business in the City of Kansas City, Jackson County Missouri, to wit:

25 Townley Metal and Hardware Company; Emery, Bird, Thayer Dry Goods Company; George B. Peck Dry Goods Company; Jones Dry Goods Company; Webb-Freyschlag Mercantile Company; Kelly & Williams Druggists' Sundry Company; Baker & Lockwood Manufacturing Company; Campbell Glass and Paint Company; Cutler Paint and Glass Company; Faeth Iron Company; Joseph D. Havens Company; J. W. Jenkins' Sons Music Company; Robert Keith Furniture and Carpet Company; Kansas City Paper House; Kansas City Roofing and Corrugating Company; Ryley-Wilson Grocer Company; Ridenour-Baker Grocery Company; Western Grocer Company; Jacoby Furniture Company; Maxwell McClure-Fitts Dry Goods Company; Swofford Brothers Dry Goods Company; Burnham, Hanna, Munger Dry Goods Company; Ellet-Kendall Shoe Company; Smith-McCord-Townsend Dry Goods Company; McPike Drug Company; Evans-Smith Drug Company; Richard & Conover Hardware Company; Woodson Smith Hat Company; Jay & King Hat Company; John Taylor Dry Goods Company.

These complainants further show that G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer are partners doing business at said city under the firm name and style of G. Bernheimer Brothers & Company; that William Barton, K. L. Barton and G. A. Barton are partners doing business at said city under the firm name of Barton Brothers; that F. A. Faxon and J. A. Gallagher are partners in said city under the name of Faxon & Gallagher.

These complainants further show that the following named corporations are duly organized and existing under and by virtue of law and have their principal places of business in the City of St. Joseph, Buchanan County, State of Missouri, to wit:

Tootle, Wheeler & Motter Mercantile Company, John S. Brittain Dry Goods Company, Hundley Dry Goods Company, Richardson Dry Goods Company.

26 These complainants further show that the following named corporations are duly organized and existing by virtue of

law and have their principal places of business in the City of Omaha, State of Nebraska, to wit:

M. E. Smith & Company, Byrne & Hammer Dry Goods Company, American Hand Sewed Shoe Company, Hayden Brothers, O'Brien Company, E. E. Bruce & Company, the Bennett Company, Thomas Kilpatrick & Company, Orchard & Wilhelm Carpet Company, Browning, King & Company, Berg-Swanson Company, M. Spiesbegger & Son Company, Miller, Stewart & Beaton Carpet Furniture Company, J. L. Brandeis & Sons, F. P. Kirkendall Company, Hayward Brothers' Shoe Company.

These complainants further show that said H. A. Thompson and C. C. Belden are co-partners doing business at Omaha, Nebraska under the firm name and style of Thompson, Belden & Company; that M. Levy, H. Cohn and M. Strausberger are partners doing business at said city under the firm name of Nebraska Clothing Company.

2.

And these complainants further show that they are all engaged in either the mercantile or manufacturing business and in buying and selling various commodities shipped from the Atlantic seaboard to them respectively under the different freight classifications herein-after described, at the several cities where their respective places of business are located; and that each of them is greatly and irreparably injured by the things herein complained of.

3.

These complainants further show that the above named defendants are all corporations duly organized and existing by virtue of law, and carrying on the business of common carriers, by the method and with the instrumentalities commonly employed by steam railroad common carriers; and are engaged with their respective connections, in transporting property from the Atlantic seaboard to said Kansas City, St. Joseph and Omaha and to the cities of St. Paul and Minneapolis, State of Minnesota; and as such common carriers, the said defendants and each of them are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof and supplemental thereto.

4.

Complainants further allege that said cities of Kansas City, St. Joseph and Omaha are each located on all of said defendant roads and are served by them, except that the Chicago & Northwestern Railway does not reach nor serve the cities of St. Joseph and Kansas City, and said Chicago, Milwaukee & St. Paul Railway does not reach nor serve said city of St. Joseph; that all of said defendants are parties to the Western Trunk Line Committee Joint Through Freight Tariff W. T. L. No. 786, I. C. C. No. 678, and amendments thereof, which schedules are hereto attached and marked "Exhibit A," naming through rates from the Atlantic seaboard to St. Paul.

and Minneapolis; said schedules show the New York all-rail rates to St. Paul and Minneapolis via standard lines, subject to the Official Classification to be, to wit: \$1.15, 99 cents, 76 cents, 53 cents, and 46 cents per hundred pounds for the first, second, third, fourth and fifth classes of freight respectively, all of which more clearly appears from the following table:

All Rail Rates via Standard Lines Subject to Official Classification to St. Paul and Minneapolis, Minn.

From—	Classes.				
	Rates in cents per hundred pounds.				
	1	2	3	4	5
New York.....	115	99	76	53	46

5.

These complainants further show that in the division of the above through rates defendant carriers allow and pay to their eastern connections full local rates from New York to Chicago, as follows, to wit: 75 cents, 65 cents, 50 cents, 35 cents and 30 cents per hundred pounds on first, second, third, fourth and fifth classes of freight matter respectively, and charge, accept and retain as their proportion of said rates upon the several classes aforesaid 40 cents, 34 cents, 26 cents, 18 cents and 16 cents per hundred pounds respectively.

6.

These complainants further show that said defendant carriers are all parties to The Western Trunk Line Committee Joint Through Freight Tariff W. T. L. No. 215, I. C. C. No. 471, hereto attached and marked "Exhibit B," naming local rates per hundred pounds from Mississippi River points and Chicago to said Kansas City, St. Joseph and Omaha, as follows:

Class Rates Subject to Western Classification to Kansas City, Mo., St. Joseph, Mo., and Omaha, Neb.

From.—	Classes.				
	Rates in cents per hundred pounds.				
	1	2	3	4	5
Mississippi River Points.....	60	45	35	27	22
Chicago, Illinois.....	80	65	45	32	27

29 That the standard all-rail through rates from New York to Kansas City, St. Joseph and Omaha are as follows: \$1.47, \$1.20, 93c, 68c and 57c per hundred pounds for the said five classes of freight matter respectively; that said through rates from New York to said Kansas City, St. Joseph and Omaha are arrived at by

adding to the rates from Mississippi River points, as shown above, the following rates subject to official classification, to wit: 87c, 75c, 58c, 41c and 35c per hundred pounds for said five classes respectively; that the aforesaid through rates, applying from New York to Kansas City, are observed by defendant carriers on traffic moving by way of Chicago; that in the division of said through rates from Atlantic seaboard to said three Missouri River cities, Kansas City, St. Joseph and Omaha, each of said defendant railroad companies allows and pays to said eastern connections 72.3c, 62.4c, 48.4c, 34.3c and 29.4c per hundred pounds on the said five classes respectively; and charges, accepts and retains as their respective shares of said through rates upon the several classes aforesaid 74.7c, 57.6, 44.6c, 33.7c and 27.6c per hundred pounds.

7.

These complainants further show that the distances from New York to St. Paul and Minneapolis and from New York to Omaha, St. Joseph and Kansas City are substantially the same. That the distances by the several routes from New York more fully appear by the following table:

Via.	Mpls.	St. Paul,	To K. C.,	St. Joe,	Omaha.
C. R. I & P.....	1436	1426	1439	1410	1415
C. B. & Q.....	1354	1343	1400	1382	1408
C., M. & St. P.....	1332	1322	1410	x	1404
C. & N. W.....	1333	1321	x	x	1405
C. G. W.....	1342	1332	1509	1440	1415

30

Distances West of Chicago.

C. R. I. & P.....	524	514	517	498	503
C. B. & Q.....	442	431	488	470	496
C., M. & St. P.....	420	410	498	x	492
C. & N. W.....	421	409	x	x	493
C. G. W.....	430	420	597	528	503

(x) Not reached by the railroad named.

8.

These complainants further show that the rates charged and classification enforced by the defendant carriers as hereinbefore set forth for the transportation of property from the Atlantic seaboard and other eastern producing territory to Kansas City, St. Joseph and Omaha, are in themselves unreasonable and relatively unjust, unfair and prejudicial as compared with rates from the same territory to St. Paul and Minneapolis; that the volume of traffic, territory traversed, cost of operation and maintenance, railroad property values and services that are involved in the handling of traffic from the Atlantic seaboard to Missouri River points and to Minneapolis and

St. Paul are substantially the same; that complainants are subjected to undue discrimination, prejudice and disadvantage and that said rates to Kansas City, St. Joseph and Omaha are therefore in violation of the act to regulate commerce, with amendments and supplements thereto.

9.

These complainants further show that large portions of territory served by these complainants are also served by persons, firms and corporations in the same kind of business who receive their shipments from the initial eastern points at St. Paul and Minneapolis; and the complainants further allege that the defendant Railroad

Companies, and each of them, for a long time past, have been, and now are, engaged in transporting freight from the Atlantic seaboard westward through the Cities of Kansas City, St. Joseph and Omaha, to be delivered to persons other than these complainants, and at points of destination hundreds of miles west from said Cities of Kansas City, St. Joseph and Omaha, and at per ton per mile rates that are less than the per ton per mile rates charged to these complainants, and in many instances said rates charged by defendant companies for transportation to said ultimate and remote points of destination are less than the per ton per mile rates charged to these complainants, wherein and whereby the defendant companies unjustly discriminate against these complainants.

10.

These complainants further show that the following rates from the Atlantic seaboard to the three Missouri River cities aforesaid are reasonable and just rates and will pay for all operating expenses, maintenance, and a fair profit on the fair value of the property owned by the defendant railroads employed in transporting freight from the Atlantic seaboard to Omaha, St. Joseph and Kansas City, to wit: per hundred pounds, first class, \$1.10; second class, 95¼ cents; third class, 72½ cents; fourth class, 51¼ cents; fifth class, 44 cents; subject to the Official Classification.

That the through rates charged from the Atlantic seaboard to said three cities, Omaha, St. Joseph and Kansas City, to wit: \$1.47, \$1.20, 93 cents, 68 cents and 57 cents per hundred pounds for the said five classes of freight matter respectively, are unjust, unreasonable, excessive and discriminatory against, and prejudicial to these complainants, and each of them, and that the said sums charged, accepted and retained by the defendant companies, respectively, on said through rates from the Atlantic seaboard via Mississippi River,

to wit: 60 cents, 45 cents, 35 cents, 27 cents and 22 cents per hundred pounds, and 74.7 cents, 57.6 cents, 44.6 cents, 33.7 cents and 27.6 cents per hundred pounds via Chicago for said five classes, respectively, are excessive, unjust, unreasonable in and of themselves because said sums and rates are higher and greater than are reasonably necessary to pay the cost of transportation and maintenance, and a fair profit on a fair valuation of the property of the defendant companies employed in transporting said freight

between said points, and are unjustly discriminatory against and prejudicial to these complainants, and each of them.

11.

And the complainants further allege that the rates complained of herein are the result of an agreement of the defendant roads made between themselves to keep the rates herein complained of at the said unjust, unlawful, excessive and unreasonable amount.

12.

These complainants further show that the rates herein complained of are the ultimate result of an unlawful combination and conspiracy entered into by the Chicago, Rock Island & Pacific Railway, the Chicago, Burlington & Quincy Railway Company and the Chicago & Northwestern Railway, which, in the spring of 1906, the exact date of which is unknown to these complainants, conspired and unlawfully confederated together to maintain said through rates to the said three Missouri River cities at said unjust, unlawful, excessive and unreasonable amounts; that in the carrying out of said conspiracy the said last three named defendants threatened the other two defendants herein that if they did as they proposed to do, to wit: reduce said through rates to the Missouri River cities, that the

33 said conspiring defendants would treat the other two defendants aforesaid in an unfriendly manner; refuse to treat them as friendly connections; refuse to route goods over their lines, and in all ways that they could strive to injure and destroy their business; that the result of said threats and coercion was that the Chicago Great Western Railway and the Chicago, Milwaukee & St. Paul Railway entered into said agreement to maintain the rates herein complained of at their present unjust, unfair and unlawful amounts.

13.

And in so much as the rates now charged are unjust, unreasonable, excessive, prejudicial and discriminative as aforesaid:

Now, therefore, these complainants pray that defendants be required to answer the charges herein and that an order be made commanding defendants, and each of them, to wholly desist from the aforesaid violations of the law and from charging, accepting and retaining said \$1.47, \$1.20, 93 cents, 68 cents and 57 cents per hundred pounds for the said five classes of freight matter, respectively, on said through rates from the Atlantic seaboard to the said Cities of Kansas City, St. Joseph and Omaha, and forbidding said defendants, and each of them, from charging, accepting and retaining as their proportions of said through rates on business moving via Chicago to Kansas City, St. Joseph and Omaha, 74.7 cents, 57.6 cents, 44.6 cents, 33.7 cents and 27.6 cents per hundred pounds, and via Mississippi River 60 cents, 45 cents, 35 cents, 27 cents and 22 cents per hundred pounds for said five classes of freight matter, respectively.

And complainants further pray that defendants be ordered to publish, within a reasonable time, through rates from the Atlantic

seaboard to Kansas City, St. Joseph and Omaha, and to adopt and put said rates in force, and that such rates shall not exceed \$1.10, 95¼ cents, 72½ cents, 51½ cents and 44 cents per hundred pounds for the five classes aforesaid, respectively, subject to Official Classification, with proportionate reductions from eastern producing points, as shown in "Exhibit A," or such other rates as the Commission shall deem proper, and that defendants be commanded to cease charging said unjust rates and to cease the discrimination aforesaid, and that such further orders be made as are deemed necessary in the premises.

ATWOOD, LITTLEFIELD & HOOPER AND
JOHN L. WEBSTER,

Attorneys for Complainants.

STATE OF MISSOURI,
County of Jackson, ss:

W. P. Trickett, being duly sworn, says that he is the Commissioner of the Kansas City Transportation Bureau and the duly authorized agent of all of the complainants to the foregoing petition; that he knows the contents of the foregoing petition, and that the statements therein contained are true.

W. P. TRICKETT.

Subscribed and sworn to before me this 4th day of February, 1907.

J. G. L. HARVEY,
Notary Public.

My commission expires November 15, 1910.

35

EXHIBIT B.

No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al.

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

Submitted February 24, 1908. Decided June 24, 1908.

Report of the Commission.

CLARK, Commissioner:

Complainants are individuals, partnerships and corporations engaged in jobbing trade at Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, to which points they ship via the lines of the defendants large quantities of goods from the Atlantic seaboard, largely under class rates, and from which points they distribute such goods throughout a large territory to the southwest, west and northwest, and also to a comparatively small and limited territory east of the Missouri River.

In sale and distribution of their goods, complainants come in competition with jobbers located at Minneapolis and St. Paul, hereinafter referred to as the Twin Cities, and the complaint alleges unjust and unreasonable discrimination in favor of the Twin Cities and undue prejudice against Kansas City, St. Joseph and Omaha, hereinafter referred to as the Missouri River cities, due to and measured by the difference in the class rates from the Atlantic seaboard to the Twin Cities, as compared with like rates from same points to the Missouri River cities.

In testimony, briefs and argument complainants make a strong attack upon the long established system of rate making under
36 which rates to points west of the Mississippi River are made upon the basis of the rates to the Mississippi River crossings.

As railroads were constructed into the undeveloped West and, for a time at least, had their western termini at the east bank of the Mississippi River, it seems natural that when the river was crossed, and rates were established to points beyond, they should be constructed by adding certain sums to the rates already established to the river, and as additional lines were built and additional railroad crossings over the Mississippi River were constructed, competition between carriers and localities naturally established common rates to the Mississippi River crossings, especially when applied to traffic going beyond.

As the West was further developed, this same condition and like results followed at the several crossings of the Missouri River, so that to-day the rates from the Mississippi River crossings to the Missouri River crossings, Kansas City to Omaha, inclusive, are the same, and from points east, to the Missouri River cities, are the same via any of the Mississippi River crossings, East St. Louis to East Dubuque, inclusive.

Complaint alleges unreasonableness of the class rates from the Atlantic seaboard, and the defendants named in the complaint were the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company. All of these are carriers whose lines do not extend east of Chicago, and all of them have lines from Chicago, through the several Mississippi River crossings, to the Missouri River cities. The defendants whose lines are east of Chicago were made defendants upon ap-

37 It will, however, be seen that the complaint, the testimony, and the argument are all against the rates charged west of Chicago and the Mississippi River crossings.

The Sioux City Commercial Club intervened and supported the complainants' request, introducing and emphasizing, however, the view that whatever might be done for Omaha should likewise be done for Sioux City, and arguing that as Sioux City was also a Missouri River crossing it should be placed upon a parity with Omaha. The St. Paul Jobbers and Manufacturers' Association, of St. Paul, and the Commercial Club, of Minneapolis, intervened and in substance

joined with and supported the defendants. The Chicago Association of Commerce and the Merchants' Traffic Bureau and the Business Men's League of St. Louis appeared at the hearings on behalf of the commercial interests of their respective cities, offered evidence, and were heard on brief and in oral argument in defense of the system of rate construction based upon the Mississippi River, and in opposition to a rate adjustment that would give the Missouri River cities an advantage at the expense of Chicago and St. Louis.

Complainants alleged that the class rates from the Atlantic seaboard, of which New York will be taken as representative, to the Missouri River cities, to wit: in cents per 100 pounds:

1	2	3	4	5
<u>147</u>	<u>120</u>	<u>93</u>	<u>68</u>	<u>57</u>

are unjust and unreasonable; that they are unjustly discriminatory against the Missouri River cities as compared with the class rates from New York to the Twin Cities, to wit: in cents per 100 pounds:

1	2	3	4	5
<u>115</u>	<u>99</u>	<u>76</u>	<u>53</u>	<u>46</u>

38 and they ask that the Commission establish from New York to the Missouri River cities the following through class rates in cents per 100 pounds:

1	2	3	4	5
<u>110</u>	<u>95.25</u>	<u>72.5</u>	<u>51.5</u>	<u>44</u>

together with proportionate reductions from eastern producing points as shown in Western Trunk Line Tariff No. 786, I. C. C. No. 678, or such other rates as may be found just and reasonable.

Defendants, Chicago, Rock Island & Pacific Railway; Chicago, Burlington & Quincy Railway; Chicago, Milwaukee & St. Paul Railway; Chicago & Northwestern Railway, and Chicago Great Western Railway, are parties to the tariff so referred to. It contains rates on classes and commodities from "Atlantic seaboard and points west thereof, east of the western termini of the trunk lines," to St. Paul, Minneapolis, etc., and the term "Atlantic seaboard" is used herein in that sense.

Defendants admit the correctness of the rates stated in the complaint, and the divisions thereof between the several carriers, and the distances via the various routes, but they deny that such rates are unjust and unreasonable, or unjustly discriminatory in comparison with the rates to the Twin Cities. Of the five original defendants, the Rock Island, the Northwestern and the Great Western allege justification for the lower rates to the Twin Cities on the ground of competition by water as well as of competition via the Canadian Pacific and the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter referred to as the Soo Line.

Of the numerous complainants, only representatives of the dry goods interests appeared to give evidence at the hearings, with the

exception of one wholesale grocer, introduced by the intervenor, Sioux City Commercial Club. The jobbers of Sioux City sell goods in northwestern Iowa, southwestern Minnesota, South Dakota, 39 northern Nebraska, and a part of Wyoming. They come into competition with jobbers at Chicago, Omaha, the Twin Cities, and other intermediate jobbing points, their strongest competition being with Omaha on the south and the Twin Cities on the north.

With the exception of North Dakota, western and northwestern Minnesota and Canada, it may be said in general that the dry goods concerns in the Missouri River cities compete in all the territory from the Missouri River to the Pacific Ocean and from the Canadian boundary to the Gulf, and in much of this territory they meet competition more or less keen from jobbers at Chicago, St. Louis, the Twin Cities, Denver, San Francisco, and various smaller jobbing points. In Montana, Washington and common points territory, the Missouri River cities jobbers meet strong competition from jobbers in the Twin Cities, New York, Chicago, St. Louis, and San Francisco; New York and the Twin Cities having an advantage in that territory of the difference between the rates from New York to the Missouri River cities and from New York to the Twin Cities. In the West and Southwest the strongest competitors of the Missouri River cities are New York, Chicago and St. Louis. In Iowa, southeastern Dakota and southwestern Minnesota the rates equalize at greater distances from the Twin Cities than from the Missouri River cities.

While the Missouri River cities jobbers are at a disadvantage as compared with the Twin Cities jobbers in Minnesota, North Dakota, northeastern South Dakota and Canadian territory, the Twin Cities jobbers are at a like and apparently equal disadvantage in the territory immediately west and southwest of the Missouri River cities and in the Black Hills district of South Dakota. There are points west of the Missouri River which can be reached by the jobber at St.

40 Louis or at New York, under a combination rate based on St. Louis, cheaper than they can be reached by the Missouri

River cities jobbers under a combination rate based on the Missouri River, but the evidence seemed to show that in general this was where the application of a through rate at an intermediate point on the same line had that effect.

The record shows that three wholesale dry goods houses at Kansas City, four at St. Joseph, and two at Omaha, do an aggregate annual business of about \$40,000,000. They estimate that their inbound freight charges amount to about $3\frac{1}{4}$ per cent. of the total sales; that their total expenses amount to 13 per cent. of the total sales, and that on an annual business of \$5,000,000 the Twin Cities jobbers would have an advantage of approximately \$40,000 over the jobbers at the Missouri River cities by reason of the difference in freight rates. This estimate presumably assumes that the total of the year's sales is made in territory strictly competitive between the Missouri River cities and the Twin Cities, and that it all moves under the first-class rate.

Complainants insist that the system of basing rates to the Missouri River cities and points beyond upon the Mississippi River crossings

is improper. Their expert testified that the Mississippi River basis should be abolished, but he did not think the Missouri River basis should be abolished, because, in his opinion, the country west of the Missouri River had not developed sufficiently as yet to warrant that change.

As has been noted, the Missouri River cities have a certain territory naturally tributary to them in which the Twin Cities are apparently unable to compete with them, but in certain other territory naturally tributary to the Twin Cities the Twin Cities jobbers have an advantage over the Missouri River cities jobbers, and this must necessarily be so as to all distributing centers if the cost of the

service and the distance which goods are transported are to be given any consideration in determining transportation rates. It is not possible to place all commercial centers on an equality in the cost of transportation except by basing transportation charges upon the same principle that underlies the government's charges for the transmission of mail matter.

It is therefore proper for us to here look into the question of not only what the rates are, but upon what principles they are constructed, by what conditions they are controlled, and what would be the effect of important changes therein. Chicago is 912 miles and St. Louis is 1,063 miles from New York; Kansas City is 280 miles northwest of St. Louis; St. Joseph is about 65 miles northwest of Kansas City, and Omaha is approximately 200 miles northwest of Kansas City. The short line mileages from New York to the Missouri River cities are via St. Louis to Kansas City, 1,342 miles; to St. Joseph, 1,390 miles; to Omaha, 1,477 miles, and via Chicago to Kansas City, 1,370 miles; to St. Joseph, 1,382 miles, and to Omaha, 1,405 miles. The short line mileage from Chicago to Kansas City is 458 miles; to St. Joseph, 470 miles, and to Omaha, 492 miles. The short line mileage from Chicago to Minneapolis is 420 miles and to St. Paul 409 miles. The average distances, however, between Chicago and the Missouri River cities and between Chicago and the Twin Cities are approximately the same.

For a long time the rates from New York to Points east of Chicago and to points between Chicago and the Mississippi River have been established on a percentage basis, the New York-Chicago rate being taken as 100 per cent. The rates from New York to points east of Chicago are fixed at certain percentages below the New York-Chicago rates and from New York to points beyond Chicago up to the Mississippi River crossings at certain percentages above the New York-Chicago rates.

42 Rates from New York to the Mississippi River crossings were fixed by the establishment of the New York-East St. Louis rate at 116 per cent. of the New York-Chicago rate, and it will be seen that the mileage from New York to East St. Louis is substantially 116 per cent. of the mileage from New York to Chicago. On January 1, 1908, the bridge tolls between East St. Louis and St. Louis were taken into the through rates and St. Louis, Missouri, and East St. Louis, Illinois, were placed upon the basis of 117 per cent. of the New York-Chicago rates, which resulted in increasing the class rates 1 cent in each of the first three classes. The rates and

divisions quoted herein, however, are those in effect at the time of the hearing of this case.

East St. Louis being a Mississippi River crossing, and the rates having been established at 116 per cent. of the New York-Chicago rates, the rates from New York to all of the other Mississippi River crossings to and including East Dubuque, Illinois, were fixed the same as to East St. Louis on traffic moving through them and to points beyond. This resulted in establishing class rate from New York to the several Mississippi River crossings, in cents per 100 pounds, as follows:

1	2	3	4	5
<u>87</u>	<u>75</u>	<u>58</u>	<u>41</u>	<u>35</u>

The local class rates under Western Classification applying from the several Mississippi River crossings on traffic moving through them from New York and destined to the Missouri River cities were, in cents per 100 pounds:

1	2	3	4	5
<u>60</u>	<u>45</u>	<u>35</u>	<u>27</u>	<u>22</u>

It will, therefore, be seen that the through class rates from New York to the Missouri River cities made by combination of the
43 class rates to the Mississippi River crossings applicable on business beyond and the class rates from the Mississippi River crossings to the Missouri River cities resulted in class rates in cents per 100 pounds as follows:

1	2	3	4	5
<u>147</u>	<u>120</u>	<u>93</u>	<u>68</u>	<u>57</u>

It should be understood that these rates apply on traffic moving via Chicago and that much of the traffic moving through the upper Mississippi River crossings moves via Chicago, and it should be remembered that the rates west of the Mississippi River crossings are not constructed upon percentages of the New York-Chicago rates, or upon any other percentage basis. They are the independently established class rates applying between the Mississippi River crossings and the Missouri River crossings and are made without reference to any methods employed in fixing the rates from the Atlantic seaboard to the Mississippi River crossings.

The local class rates from Chicago to the several Mississippi River crossings are on scales which range from 35.3 to 43.3 cents first class, and it will therefore be seen that the proportional rate from New York to the Mississippi River crossings applicable on business going west of the Mississippi is considerably less than the full combination of class rates on Chicago. The proportionals from New York to the Mississippi River crossings through Chicago are divided as follows:

Lines east of Chicago:

1	2	3	4	5
<u>72.3</u>	<u>62.4</u>	<u>48.4</u>	<u>34.3</u>	<u>29.4</u>

44 Lines west of Chicago:

1	2	3	4	5
<u>14.7</u>	<u>12.6</u>	<u>9.6</u>	<u>6.7</u>	<u>5.6</u>

In addition to the above division of the proportional rate up to the Mississippi River crossings the lines west of Chicago on business destined to the Missouri River cities get their full class rate local giving them as earnings on this traffic for their service between Chicago and the Missouri River cities the following, in cents per 100 pounds:

1	2	3	4	5
<u>74.7</u>	<u>57.6</u>	<u>44.6</u>	<u>33.7</u>	<u>27.6</u>

The through class rates from New York to the Twin Cities, in cents per 100 pounds, are divided as follows:

To the lines east of Chicago:

1	2	3	4	5
<u>75</u>	<u>65</u>	<u>50</u>	<u>35</u>	<u>30</u>

To the lines west of Chicago:

1	2	3	4	5
<u>40</u>	<u>34</u>	<u>26</u>	<u>18</u>	<u>16</u>

And it is thus seen that in this division the lines east of Chicago get their full New York-Chicago rates. The division going to the lines west of Chicago constitute a line of proportional rates applicable only upon through business, the local class rates between Chicago and the Twin Cities being established on a scale of 60 cents first class.

Complainants allege that the operating and transportation conditions between Chicago and the Missouri River cities and between Chicago and the Twin Cities are not substantially different
45 and in no sense justify the existing differences in rates.

As has been seen, the defendants allege the controlling influence of competition by water and via the Soo Line in the fixing of the Chicago-Twin Cities proportionals. Complainant argues that this claim is not possessed of any merit, and in support of that argument cites the fact that these Chicago-Twin Cities rates have been increased during the season of lake navigation and reduced at a time when navigation was closed. There is much conflict in the testimony as to the effect of the competition of the Soo Line and as to when that became a factor in the situation. Complainants went to great trouble to locate the facts, but a careful inquiry into the records of the Commission show that in some respects complainants' witnesses were mistaken on this point.

The reports of the Commission disclose that in 1886 there were class rates between Chicago and the Twin Cities, in cents per 100 pounds, as follows:

1	2	3	4	5
<hr/> 40	<hr/> 30	<hr/> 20	<hr/> 15	<hr/> 10

These rates were in effect at the time the Chicago, Burlington & Northern Railway (now Chicago, Burlington & Quincy Railway) began its operations in that year. From that time to June 4, 1888, these rates were sometimes higher and sometimes lower than above quoted. A short time prior to the date last mentioned, the Northwestern Association, made up of all the lines between Chicago and the Twin Cities, excepting the Chicago, Burlington & Northern, increased these rates to the basis of 60 cents first class. The Chicago, Burlington & Northern assented to the 60-cent scale, but claiming an alleged violation of the Agreement it said:

46 Finding that many of our patrons would be discriminated against by the 60-cent scale, and owing to the extremely low rates from the seaboard prevailing by Lake Superior lines, we have decided upon the scale, which was:

1	2	3	4	5
<hr/> 40	<hr/> 33	<hr/> 26	<hr/> 18	<hr/> 12½

At the same time the same carrier established all-rail proportional class rates, applicable only upon traffic originating at or east of the western termini of the Trunk Lines, as follows:

1	2	3	4	5
<hr/> 31	<hr/> 22	<hr/> 23	<hr/> 17	<hr/> 11

In re C., St. P. & K. C. Ry., 2 I. C. C. Rep., 231.

The Minneapolis, St. Paul & Sault Ste. Marie Railway Company completed its line from Sault Ste. Marie to Minneapolis in January, 1888.

In July, 1889, all of the roads between Chicago and the Twin Cities established the 60-cent scale between Chicago and the Twin Cities on traffic from the Atlantic seaboard; on September 25th it was again reduced to the 40-cent scale and remained there until November, when the 60-cent scale was again restored. This remained in effect until in February, 1890, when the 40-cent scale was again adopted. It was raised to a 50-cent scale in August and to the 60-cent scale in November of the same year. This continued in force until January, 1897, when the Soo Line, against the vigorous protests of the other lines, issued a tariff which became effective in February, 1897, and which established proportional class rates from Sault Ste. Marie to the Twin Cities on all traffic originating south

47 of Ogdensburg and east of Newport, Vermont, when routed via the Soo Line, and on traffic originating at or east of Pittsburg when routed via Mackinaw City destined to Minneapolis and St. Paul, in cents per 100 pounds, as follows:

1	2	3	4	5
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
40	35	26	18	16

This line of differentials in connection with the Canadian Pacific rates to Sault Ste. Marie materially reduced the through class rates and all of the lines between Chicago and the Twin Cities followed this reduction in May of 1897. In June, 1899, the Chicago-Twin Cities lines advanced these proportionals to a 50-cent scale and at a time when lake navigation was open. This scale remained in effect until January, 1901, when it was again reduced to the 40-cent scale at a time when navigation was closed. It is thus seen that these carriers have made numerous, persistent and vigorous efforts to maintain proportional rates between Chicago and the Twin Cities higher than the 40-cent scale, and that they have been unable to do so.

The Canadian Pacific despatch tariff, referred to by defendants as showing maintenance of a 40-cent scale by the Soo Line, at the same time it was party to the tariffs fixing the 50-cent scale, taken in connection with Boston & Maine Railroad's joint west-bound tariff, show that class rates from Boston and points taking same rate to the Twin Cities were established via the Canadian Pacific Railway and the Soo Line in cents per 100 pounds, as follows:

1	2	3	4	5
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
105	91	70	49	42

The Chicago-Twin Cities lines were named as parties to these tariffs as well, as the Soo Line, but it should be understood that these rates applied via a differential line upon which the same rates are now in effect.

48 With further reference to the influence of the water transportation upon the Chicago-Twin Cities proportionals, it is found that the class rates from New York to Buffalo, in cents per 100 pounds, are:

1	2	3	4	5
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
39	33	28	19	16

And that the class rates from Duluth to the Twin Cities, in cents per 100 pounds, are:

1	2	3	4	5
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
35	30	23	17	10

The through first-class rate, New York to the Twin Cities, is \$1.15. The sum of the rail rates, New York to Buffalo and Duluth to the

Twin Cities, on first class, is 74 cents, leaving 41 cents that could be applied to the cost of transportation by water between Buffalo and Duluth. It seems safe to say that if the all-rail through rates were materially increased with any assurance that the increase would be maintained for a long period, there would be every inducement for the interested jobbers to arrange for independent water transportation from Buffalo to Duluth and avail themselves of the combination that could be so constructed. The lake-and-rail rate on first class, New York to Duluth, is 68 cents per 100 pounds, which added to the first-class rate, Duluth to the Twin Cities, of 35 cents, make a combination rate of \$1.03, as compared with the all-rail rate via Chicago of \$1.15. There are now in effect lake-and-rail rates from New York to the Twin Cities on a scale of 83 cents per 100 pounds on first class via Duluth.

The controlling influence of the water and Canadian competition over the rates from the seaboard to the Twin Cities is apparent, and it is also apparent that the defendant carriers west of Chicago must meet the force of that competition or refrain from participation in that business. Their local class rates from Chicago to the Twin Cities are on the basis of 60 cents first class, as compared with a 55-cent scale via lake and rail from Chicago to the Twin Cities via Gladstone and the Soo Line, and a 50-cent scale from Chicago to the Twin Cities via Duluth.

The joint through class rates from New York to the Twin Cities apply up to the Missouri River crossings on traffic from the Atlantic seaboard destined through them to the Montana common points and to Spokane, Washington, and common points, as well as upon traffic through the Twin Cities to the same destinations. The locals from the Missouri River crossings and from the Twin Cities are added thereto to make up the combination through rates. The local class rates from the Twin Cities to Montana common points, and to Spokane, Washington, and common points, are the same as from the Missouri River crossings to the same destinations. This adjustment is forced by competition. If the lines via the Missouri River crossings did not make the same rates to Montana and Washington points that are available via the Twin Cities they could get none of that business.

The class rates from Chicago to Oklahoma City, moving via Kansas City, are on a scale of \$1.50 per 100 pounds first class, of which the carriers between Chicago and Kansas City receive as their division 48 cents.

The class rates from Chicago to Texas common points applying via Kansas City are on a scale of \$1.57 per 100 pounds first class, of which the carriers between Chicago and Kansas City receive 47.1 cents. The class rates from Chicago, through Kansas City, to El Paso, Texas, are on the scale of \$1.69 per 100 pounds first class, of which the carriers between Chicago and Kansas City receive as their division 47.1 cents. The distance from New York to the Missouri River cities is substantially the same as from Chicago to El Paso.

On transcontinental traffic from the Atlantic seaboard to the Pacific Coast terminals, carriers west of Chicago receive

as their division of the class rates for the haul between Chicago and the Missouri River crossings on the first five classes, in cents per 100 pounds, the following:

1	2	3	4	5
<u>33</u>	<u>28.50</u>	<u>24.75</u>	<u>22.50</u>	<u>19.50</u>

From these divisions of through rates accepted by the carriers between Chicago and the Missouri River crossings and from the admission of the Chicago, Burlington & Quincy Railway Company in its answer that they give said carriers some profit, complainants argue that the rates charged from the Mississippi River crossings to the Missouri River crossings are unreasonably and unjustly high.

Defendants answer this by asserting that a low division of the through rate for a long haul is not fairly comparable with the local rate between the same points; that the through rates are not made or controlled by them; that they are frequently made in competition with water transportation to the Pacific Coast terminals or to the Gulf ports, and that while none of them can be said to represent less than the actual cost of the service they cannot be considered in and of themselves as remunerative and cannot be fairly taken as a measure of their rates. Manifestly, a carrier may not properly or lawfully engage in transportation at a rate less than the cost of the service. So to do would place an improper and unlawful burden upon other traffic, but if a carrier elects to accept a low division of a through rate for a long haul rather than to stay out of that business, it cannot be held to have thereby committed itself to that

51 division as a measure of the reasonableness of its other rates for transportation between the same points on business from or to different destinations or of a different character.

Complainants argue that the cost of transportation on eastern and western roads is about the same; that the average rate per ton per mile received by the western roads is greater than that received by the eastern roads, and that the conditions of transportation are so substantially similar that it would be entirely fair to project to the Missouri River the same rate per ton per mile that represents the rates from the Atlantic seaboard to the Mississippi River. There are, however, differences in the physical conditions. The density of population and of traffic is materialy less west of the Mississippi River, and the cost of operation is greater, due, among other things, to higher wages and higher cost of fuel and other necessary supplies. It seems clear that the lines west of the Mississippi River are entitled to a somewhat higher charge than would be received for the same service on the lines east of the Mississippi River and it seems that the only question to be determined here is whether or not the class rates of the defendant carriers between the Mississippi River and the Missouri River cities on business from the seaboard and destined to the Missouri River cities are too high. It seems patent that any change in the rates east of the Mississippi River, even if warranted, would fail to accomplish what the complainants desire, because whatever of advantage accrued therefrom to the Missouri River cities

would accrue to a like degree or extent to their principal competitive commercial centers, to wit: New York, Chicago, St. Louis and the Twin Cities.

The average short line distance between the nearest Mississippi River crossings and the individual Missouri River cities is about 275 miles. The average distance between the Mississippi River crossings, via which the rates apply, and the Missouri River cities is 325 miles. As has been before stated, the local class rates between the Mississippi and the Missouri River crossings are, in cents per 100 pounds:

1	2	3	4	5
<hr/> 60	<hr/> 45	<hr/> 35	<hr/> 27	<hr/> 22

And these are the rates that are added to the rates up to the Mississippi River crossings to make up the through rates from the Atlantic seaboard to the Missouri River cities. Are these rates, as so used, and the through rates resulting therefrom, unwarrantedly high or unduly discriminatory or unjustly prejudicial? Can they be changed without doing injustice elsewhere?

As has been seen, the first-class rate from the Atlantic seaboard to Chicago is 75 cents and to the Mississippi River crossings is 87 cents. From Chicago to the Missouri River crossings the first-class rate is 80 cents, and from the Mississippi River to the Missouri River is 60 cents. The through first-class rate from the seaboard to the Missouri River is, therefore, \$1.47; the combination on Chicago is \$1.55 and on St. Louis is \$1.47. The St. Louis jobbers can, so far as freight charges are concerned, purchase in the east and sell at all points east of the Missouri River cities cheaper than can the jobbers in the Missouri River cities, while at the same time the St. Louis dealers can sell in the Missouri River cities themselves, and at some points beyond them, just as cheaply as can the dealers located in the Missouri River cities. The Chicago dealers seems to have a handicap of 8 cents on the first-class rate as compared with St. Louis. This, no doubt, is due to the fact that direct lines from the seaboard to St. Louis, belonging to one system, make the rate to St. Louis.

The class rates from the Atlantic seaboard to Sioux City, when made upon the Mississippi River combination through any crossing, East Burlington to East Dubuque, inclusive, are the same as to Omaha. The combination on Chicago is the same to Sioux City as to the Missouri River cities. The combination on Mississippi River crossings south of East Burlington is higher to Sioux City.

If the local class rates of defendants between the Mississippi and Missouri Rivers were reduced, it would give the same degree of advantage to all the producing and distributing centers on and east of the Missouri River, and their relative advantages or disadvantages would not be changed, while a very serious inroad upon the revenues of the carriers would inevitably result, and at a time of industrial depression when it could not well be borne. Such a change would

necessitate corresponding changes in the rates to and from intermediate points and would probably be reflected in changes in commodity rates as well. The local class rates between the rivers are high, but this is not the time to precipitate such a violent change as would follow an important reduction of them. The first-class rate from Buffalo to Chicago, about 540 miles, and from Pittsburg to Chicago, about 465 miles, is 45 cents. From Cincinnati to Chicago, 306 miles, it is 40 cents.

Complainants urge that defendant carriers west of Chicago and the Mississippi River crossings have from their operations accumulated enormous surpluses and that, therefore, they cannot fairly present the plea of financial difficulty. Especial attention is called to the reports of the defendant, Chicago, Burlington & Quincy Railway Company, which show a surplus of nearly \$42,000,000. The carrying of this item in reports is certainly misleading to those who are not otherwise acquainted with the true facts. This surplus is in no sense available cash or free surplus. The record in this case shows that it simply represents the amount of earnings that have been expended in past years for betterments and improvements in the road, and additions to its equipment.

An abundant share of the prosperity and development of the trans-Mississippi and trans-Missouri territories has come to the Missouri River cities, from which this complaint comes, but the fact that they have prospered in the past as a result of rapid expansion and development of new territory may not be taken as conclusive evidence of the correctness or justness at this time of the rate adjustment that has prevailed in the past. We are not impressed with the view that the system of making rates on certain basing lines should be abolished. No system of rate making has been suggested as a substitute for it, except one based upon the postage stamp theory, or one based strictly upon mileage. Either of these would create revolution in transportation affairs and chaos in commercial affairs that have been builded upon the system of rate making now in effect. It must not, however, be assumed that a basing line for rates may be established and be made an impassable barrier for through rates, or that cities or markets located at or upon such basing line have any inviolable possession of, or hold upon, the right to distribute traffic in or from the territory lying beyond. Development of natural resources, increase in population, growth of manufacturing or producing facilities, and increased traffic on railroads create changed conditions which may warrant changes in rates and in rate adjustments in order to afford just and reasonable opportunity for interchange of traffic between points of production and points of large consumption.

We cannot agree with the argument that the rates from the Atlantic seaboard or from Chicago to the Missouri River cities should be the same as or lower than rates from same points to the Twin Cities. As has been seen, the rates to the Twin Cities cannot escape the influence of the water and Canadian competition.

As has been stated, the through rates from Atlantic seaboard territory to the Missouri River cities are made by adding together the

rates from points of origin to the Mississippi River crossings, using proportional rates when such are available, and the local class rates from Mississippi River crossings to the Missouri River cities. The through rates so established are, in our opinion, unreasonably high. This is so because those portions of the through rates which apply between the Mississippi River crossings and the Missouri River cities are too high. These are defendants' "separately established rates" which are "applied to the through transportation" and, therefore, the through rates should be adjusted by reduction of those factors or parts thereof which are found to be unreasonable.

Out of consideration for long established custom in rate construction and publication, involving different classifications, we refrain from establishing joint through rates, and, permitting the rates from Atlantic seaboard territory to the Mississippi River crossings to remain as at present, we conclude that the separately established rates of the defendants, Chicago, Rock Island & Pacific; Chicago, Burlington & Quincy; Chicago, Milwaukee & St. Paul; Chicago & Northwestern, and Chicago Great Western Railway Companies, applied between the Mississippi River crossings and the Missouri River cities to the through transportation of shipments moving under class rates and coming from the Atlantic seaboard, taking New York as representative, should be reduced to the following scale:

1	2	3	4	5
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
51	38	30	23	19

56 and that these rates should also be applied to the transportation of through shipments which move under class rates and which originate at points of origin specified on pages 3 and 4 of Complainants' Exhibit A, same being the aforesaid Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates.

These rates should also be applied on traffic from same points of origin destined to Sioux City, Iowa, when it moves through any of the Mississippi River crossings, East Burlington to East Dubuque, inclusive.

As to the other defendants, the complaint should be dismissed.

An order will be entered in accordance with these views.

57

EXHIBIT C.

Before the Interstate Commerce Commission.

Docket No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Com-
plainants,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.,
Defendants.

Intervening Petition in the Nature of a Petition for Rehearing of the Above Entitled Cause by the Illinois Central Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago & Alton Railroad Company, the Missouri Pacific Railway Company, the Missouri, Kansas & Texas Railway Company and the St. Louis & San Francisco Railroad Company.

Your petitioners, The Illinois Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; The Chicago & Alton Railroad Company a corporation organized and existing under and by virtue of the laws of the State of Illinois; The Missouri Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri; The Missouri, Kansas & Texas Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, and The St. Louis & San Francisco Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri,

58 represent that they are common carriers engaged in the transportation of property by railroad by continuous carriage or shipment from Chicago via the Mississippi River crossings and from St. Louis to points in the west and southwest portions of the country through the Cities of Omaha, Kansas City, St. Joseph and Sioux City; that each of the petitioners herein connect one or both of the first mentioned cities with one or more of said last four mentioned cities.

Petitioners further represent that all of said above named railroads are parties to the Western Trunk Line Committee Joint Through Freight Tariff, W. T. L. No. 215, I. C. C. No. 471, and amendments thereof, naming local rates per hundred pounds from Mississippi River points and Chicago to Kansas City, St. Joseph, Omaha and Sioux City. Petitioners further represent that none of the above mentioned railroads has lines of railroad running to the Cities of Minneapolis and St. Paul.

Petitioners represent that on or about the 11th day of February, 1907, a complaint was filed in the office of the Commission at Washington, District of Columbia, by the Burnham, Hanna, Munger

Dry Goods Company, a corporation, and others, as complainants, against the following named railroads as defendants: The Chicago, Rock Island & Pacific Railway, The Chicago, Burlington & Quincy Railway Company, The Chicago, Milwaukee & St. Paul Railway, The Chicago & Northwestern Railway, The Chicago Great Western Railway, the said complaint bearing number 983 on the docket of the Commission. Said complaint alleges in substance that the complainants are numerous corporations, firms and individuals having their principal places of business in the Cities of Kansas City, St. Joseph and Omaha, and are engaged in the mercantile or manufacturing business and in buying and selling various commodities

59 shipped from the Atlantic seaboard to the several cities where their respective places of business are located; that the defendants are common carriers engaged in transporting property from the Atlantic seaboard to said Kansas City, St. Joseph and Omaha, and to the Cities of Minneapolis and St. Paul, and that as such, defendants are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto; that the defendant railroads are parties to the Western Trunk Line Committee Through Freight Tariff W. T. L. No. 786, I. C. C. No. 678, naming through rates from the Atlantic seaboard to St. Paul and Minneapolis, said complaint setting out said through rates in full; that the defendant carriers are all parties to the Western Trunk Line Committee, Joint Through Freight Tariff W. T. L. No. 215, I. C. C. No. 471, naming local rates per hundred pounds from Mississippi River points and Chicago to said Kansas City, St. Joseph and Omaha, said complaint setting out said rates in full. The complaint shows the distances from New York to St. Paul and Minneapolis and from New York to Omaha, St. Joseph and Kansas City and alleges that such distances are substantially the same. The complaint thereupon reads as follows:

“These complainants further show that the rates charged and classification enforced by the defendant carriers as hereinbefore set forth for the transportation of property from the Atlantic seaboard and other eastern producing territory to Kansas City, St. Joseph and Omaha, are in themselves unreasonable and relatively unjust, unfair and prejudicial as compared with rates from the same territory to St. Paul and Minneapolis; that the volume of traffic, territory traversed, cost of operation and maintenance, railroad property values and services that are involved in the handling of traffic from the Atlantic seaboard to Missouri River points and to Minneapolis and St. Paul are substantially the same; that complainants are subjected to undue discrimination, prejudice and disadvantage and

60 that said rates to Kansas City, St. Joseph and Omaha are therefore in violation of the act to regulate commerce with amendments and supplements thereto.”

The complaint then further sets forth that large portions of the territory served by complainants are also served by similar concerns conducting similar businesses from St. Paul and Minneapolis who, at said cities receive their shipments from the initial eastern points;

and that the defendants are now engaged in transporting freight from the Atlantic seaboard westward through the Cities of Kansas City, St. Joseph and Omaha to said above mentioned territory at per ton mile rates that are less than the per ton mile rates charged complainants and alleges therein discrimination against complainants. The complaint thereupon suggests as reasonable and just rates which will pay for all operating expenses, maintenance and a fair profit on the fair value of property owned by the defendant railroads employed in transporting freight from the Atlantic seaboard to the Cities of Omaha, St. Joseph and Kansas City, to wit: per hundred pounds first class, \$1.10; second class, \$.95¼; third class, \$.72½; fourth class, \$.51¼; fifth class, \$.44; subject to the "official classification" and alleges that the through rates at present charged from the Atlantic seaboard to said three cities are unjust, unreasonable, excessive and discriminatory against and prejudicial to complainants, and each of them, and that the sums charged, accepted and retained by the defendant companies respectively on said through rates from the Atlantic seaboard via Mississippi River crossings and via Chicago for said five classes respectively are excessive, unjust, unreasonable in and of themselves because said sums and rates are higher and greater than reasonably necessary and unjust, discriminatory, and prejudicial to the complainants.

61 The complaint prays that defendants be required to answer the charges therein and that an order be entered commanding them to desist from charging the rates specified therein as the present rates and forbidding the defendants, and each of them, from charging and retaining as their proportion of said through rates on business via Chicago and Mississippi River crossing to said Kansas City, St. Joseph and Omaha the present specified proportions of said through rates per hundred pounds for said five classes of said freight matter respectively, and that defendants be ordered to publish within a reasonable time *through* rates from the Atlantic seaboard to Kansas City, St. Joseph and Omaha not to exceed the amounts suggested in the complaint with proportionate reductions from the East at various points or such other rates as the Commission shall deem proper.

Thereupon such proceedings were had that the various named defendants in said complaint filed answers and at the suggestion contained in the answer of The Chicago & Northwestern Railway Company, one of the said defendants, that the through rates made the subject of complaint in the proceeding had been established and put in force and were maintained by virtue of joint traffic agreements between the defendants and various eastern railroads, the various eastern railroads specified in said answer were made additional parties defendant to said proceeding; that the Sioux City Commercial Club intervened and supported the complainant's request on the ground that said Sioux City was also a Missouri River crossing and should be placed upon a parity with Omaha, Kansas City and St. Joseph. The St. Paul Jobbers and Manufacturers' Association of St. Paul and the Commercial Club of Minneapolis and the Chicago Association of Commerce and the Merchants' Traffic Bureau and the Business Men's League of St. Louis appeared at the hearings on behalf of the

commercial interests of their respective cities in defense of the established rates and the established system of rate construction; that hearings were had upon said complaint and answers and testimony and evidence was had and considered and arguments of counsel and that on February 24, 1908, the cause was submitted to the Commission. Thereupon, after due consideration, the Commission rendered its opinion and entered its final order in the premises on June 24, 1908, which said order was in words and figures as follows, to wit:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company and the Chicago Great Western Railway Company, be and they severally are hereby notified and required to cease and desist on or before the 25th day of August, 1908, from charging, demanding, collecting or receiving for the transportation of property between the Mississippi River crossings, East St. Louis to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to the said Missouri River cities, or to points taking the same rates, their separately established class rates now in effect between said Mississippi River crossings and said Missouri River cities, which are in cents per 100 pounds as follows:

Classes	1	2	3	4	5
Rates	60	45	35	27	22

And to also cease and desist, on or before said 25th day of August, 1908, from charging demanding or receiving the above-named rates for the transportation of property between the Mississippi River crossing, East Burlington to East Dubuque, Illinois, inclusive,

and Sioux City, Iowa, when moving under class rates and when from above described points of origin and destined to Sioux City, Iowa.

It is further ordered, That said defendants, the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company be, and they severally are hereby, notified and required to establish and put in force, on or before the said 25th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to

the transportation of property between Mississippi River crossings, East St. Louis to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, taking New York as representative, or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, class rates in cents per 100 pounds not in excess of the following scale, to wit:

Classes	1	2	3	4	5
Rates	51	38	30	23	19

It is further ordered, That the rates herein established shall be applied to the transportation of property moving under class rates between Mississippi River crossings, East Burlington to East Dubuque, Illinois, inclusive, and Sioux City, Iowa, and points taking the same rates, as parts of the through class rates, on through shipments originating at Atlantic seaboard points or at other points of origin as specified on pages 3 and 4 of said Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates when destined to Sioux City, Iowa, or to points taking the same rates.

It is further ordered, That said defendants be, and they are severally hereby, authorized to make effective upon three days' notice to the public, and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the said 25th day of August, 1908. The tariffs in which the rates are given must contain the notation that they are issued under the authority hereby granted, and must refer to the title and number of this case.

And it is further ordered, That as to all the other defendants herein, the complaint in this proceeding be, and it is hereby, dismissed."

The Chicago & Alton Railroad Company, petitioner herein, connects by its lines of railroad both Chicago with St. Louis and the latter city with Kansas City. The Illinois Central Railroad Company, petitioner herein connecting St. Louis with New Orleans and Chicago, has a direct line via Dubuque from Chicago to Omaha and Sioux City. The Atchison, Topeka & Santa Fe Railway Company, petitioner herein, has direct lines of railroad from Chicago to Kansas City and St. Joseph, and from the latter two points to Galveston and El Paso. The Missouri Pacific Railway Company, petitioner herein, has lines of railroad from St. Louis through Kansas City, Omaha and St. Joseph to Denver, Galveston and El Paso. The Missouri, Kansas & Texas Railway Company, petitioner herein, connects by its lines of railway St. Louis and Kansas City, and these cities with Oklahoma City and Galveston. The St. Louis & San Francisco Railroad Company connects St. Louis with Oklahoma City and Ft. Worth

and with Kansas City and connects Kansas City via Memphis with Birmingham, Alabama.

These petitioners all participate in the traffic from the Atlantic seaboard territory via Chicago and Mississippi crossings to the Missouri River points, to wit: the four cities of Kansas City, Omaha, St. Joseph and Sioux City referred to in said order of the Commission above set forth, such traffic consisting not only of freight consigned to the said four cities, but to many other points, the freight rates to which are based upon the freight rate between the Mississippi crossings and the said four cities. The rates charged by your
65 petitioners for said service on such through traffic between the two rivers are the rates specified in the first portion of the order of the Commission of June 24, 1908, above set forth.

These petitioners aver and so state the fact to be that they were not made parties to the above described complaint and were not given any notice thereof. And as the theory of said complaint rests upon an alleged discrimination against the complainants by reason of the proportions from Chicago of through rates charged by the defendant carriers, on shipments from the Atlantic seaboard via Chicago to St. Paul and Minneapolis, as against the proportion charged from the Mississippi River crossings to Missouri River points on through shipments from the seaboard, the petitioners herein were not proper parties to said complaint and were not so made parties defendant as above stated. These petitioners were not proper parties defendant to said original complaint and were not made parties defendant thereto for the reason that the allegations in the complaint were directed and were intended to be directed against the alleged unjust discriminations in favor of St. Paul and Minneapolis as against the complainants and the said Missouri River cities. In taking evidence at the hearings of said cause the evidence was, in accordance with said petition, mainly directed at such alleged unjust discriminations in favor of St. Paul and Minneapolis and against said complainants and said Missouri River cities. These petitioners say that there was no allegation in said complaint which, if it had been brought to the attention of these petitioners, would have put them on notice of any interest of theirs in said cause or that the case related to any other rates than those between Chicago and the Twin Cities. These petitioners say that they did not receive information and they did not
66 learn the nature of the order entered in said cause and its bearing upon their interests and upon the rates made by them between Mississippi and Missouri River points until long after the entry of said order of June 24, 1908, and that immediately upon ascertaining the character of said order they caused this petition to be prepared, showing that their rights would be injuriously affected in case said order should not be modified or rescinded.

Petitioners are informed and believe and so state the fact to be that at the hearing on said complaint above referred to the only evidence as to unreasonableness in said rates so ordered to be reduced by said order was by comparisons with rates claimed to be similar to other points, but which said other rates were and are affected by water and other competition to such an extent that the comparisons made

offered no real test as to the reasonableness of the rates in question; that this appears from the opinion handed down by the Commission with its said order of June 24, 1908; that no evidence was offered by the complainants or heard as to the actual service for which said rates were charged, the value of such service, the cost of operation, the comparative density of traffic or any of the numerous other elements which offer real tests as to whether or not a given rate is reasonable in and of itself.

The order of the Commission by reducing the particular rates in question will work a great direct loss of revenue to these petitioners. These petitioners believe that the order of the Commission will upset and disturb the entire system of rates and rate making in the territory west of the Mississippi River to the Pacific Coast.

If these petitioners desire to participate in the through traffic to the Missouri River points and points beyond, petitioners must participate in the reduction enforced by said above order of June 24, 1908.

67 These petitioners further show to the Commission that the lowering of the rates from the Mississippi River crossing points on through shipments from the east to the said Missouri River cities works an undue advantage and discrimination against Chicago and the Mississippi River points, and reduces the rate charged by your petitioners for transportation from the Mississippi River crossings to the Missouri River cities to a point below what would be a reasonable charge for such services, and in the end works no advantage to the said Missouri River cities, or to the original complainants, for the reason that the reduction of the proportional of the through rate from the seaboard, taken by these petitioners, will necessitate a further reduction and adjustment of rates in the territory beyond the Missouri River, so that the same relative situation existing at the time of the filing of the original complaint herein will be again presented, and a further reduction will be then asked in the proportional coming to these petitioners and other roads carrying freight between the Mississippi River and the Missouri River points. The result would be that the rates would then be lower, but would be relatively the same as before the filing of said complaint.

These petitioners desire to have the opportunity of offering evidence before the Commission, in case a rehearing or reconsideration of this case is granted, tending to prove the facts and conclusions above set forth, and in particular tending to show that under all the circumstances the rates complained of in said original complaint for the carriage of goods from the Mississippi River crossings to the said Missouri River cities, as part of the through rate from the seaboard, was a reasonable and fair rate and a just compensation for the services performed; and further evidence tending to

68 show that the necessary result of the enforcement of the said order of June 24, 1908, would be to deprive the Cities of St. Louis and Chicago and other distributing points similarly situated of the markets west of the Missouri River.

The present basis of rates from the Atlantic seaboard territory to the Missouri River points and to points beyond has been in existence for many years and all business conditions in said territory have

grown up under said basis of rates, or in other words, all rates to territory west of the Mississippi River have been based for many years on the Mississippi River and such rates have been made by the combination of rates to and from the Mississippi River.

If it is the intention of this Honorable Commission to change the existing basis of rates into this territory, as these petitioners understand from its opinion herein, the effect thereof will necessarily extend to all rates from not only seaboard territory, but from all intermediate points, and not merely to the Missouri River, but to all territory beyond, and will be wider reaching as to its effect than any order heretofore made by this Commission; and before such order is finally put into effect all interests, which will be directly affected, should be allowed an opportunity to be heard, and your petitioners should be given an opportunity to introduce evidence as hereinbefore and hereafter stated.

These petitioners further show that under the said order of June 24, 1908, the whole reduction in the through rates from the seaboard to said Missouri River cities is made to fall upon the railroads operating west of the Mississippi River crossings, including all your petitioners; that no evidence was introduced at the hearing before this Honorable Commission tending to show that the reduction should so fall upon the proportional of the through rate from the seaboard to said Missouri River cities, received by these petitioners and the other roads defendants in said cause operating west of the Mississippi River; that, in case a rehearing or reconsideration of the said cause is granted by the commission, your petitioners will be ready and will offer to introduce testimony tending to show that in case any reduction of said through rate from the seaboard to said Missouri River cities were just, a fair share of said reduction should fall upon the proportional of said through rate received by the eastern roads operating between the seaboard and the Mississippi River crossings, or between the seaboard and Chicago.

These petitioners further state that the rate from the Mississippi River points to said Missouri River cities, which is part of the through rate from the Atlantic seaboard territory and retained by these petitioners and the original defendants to this cause is, in comparison with the local rate from said Mississippi River crossings to said Missouri River cities, a fair and reasonable rate, for the reason that practically the same amount of service in the way of handling, loading and unloading, and in transferring from car to car, is needed and, in fact, is supplied as in the case of a shipment from the Atlantic seaboard territory to St. Louis with a reshipment by the St. Louis consignees to said Missouri River cities. That the conditions of the through service from the Atlantic seaboard to the said Missouri River cities is such as not to warrant, except in comparatively few cases, the use of through cars between the seaboard territory and the Missouri River points; that in a great majority of cases shipments billed through to any one Missouri River point do not occupy a whole car, and, for that reason, must be transferred at Chicago or at a Mississippi River point to other cars loaded with shipments for the intended destination. The expense, therefore, of the western portion of the through haul is as great as would be the local haul

from Chicago and the Mississippi River points to said Missouri River cities.

70 Petitioners further believe that numerous commodity rates between the Mississippi River crossings and the Missouri River points and points beyond will necessarily be reduced as a result of said order; they believe that the local rate between St. Louis and the Missouri River points will probably be reduced for the same reason, that such reductions are bound to produce similar reductions in rates to points west of and beyond said Missouri River points, particularly in the States of Nebraska and Kansas, whereby your petitioners' business would be irreparably and unjustly injured. Petitioners believe that since the reduction ordered is only on rates from the Atlantic seaboard, discrimination will be claimed to result against such points as Cleveland, Pittsburg, Detroit and the general intermediate territory. Petitioners necessarily will be harassed with numerous complaints before this commission and before various state rate-making commissions, and the loss of revenue involved and threatened by said order of June 24, 1908, is so great as to cause petitioners the gravest apprehension.

Petitioners believe and so state the fact to be that the rates affected by said order of June 24, 1908, are reasonable, just and proper rates in and of themselves and not unjustly discriminatory to the complainants in said complaint, nor in any way whatsoever violative of any of the provisions of said act to regulate commerce and the acts amendatory thereof and supplemental thereto.

Petitioners believe that said order of June 24, 1908, not only vitally affects these petitioners, but also will affect numerous localities who were in nowise represented at said hearing, and will tend to disrupt and disturb all the economic and trade relations dependent upon a stable freight rate adjustment.

The petitioners therefore pray that the Commission grant a
71 rehearing and reconsideration of the questions raised by said complaint and covered by said opinion and order of June 24, 1908, that the commission issue an order to take effect at once staying the enforcement of said order of June 24, 1908, that these petitioners be permitted to intervene in said cause as additional defendants and to introduce evidence as to the matters set forth in this petition and as to the reasonableness in and of themselves of the rates reduced by said order, and for such further orders and relief in the premises as to the Commission may seem meet.

ILLINOIS CENTRAL RAILROAD COMPANY,
ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY,

CHICAGO & ALTON RAILROAD COMPANY,
MISSOURI PACIFIC RAILWAY COMPANY,
THE MISSOURI, KANSAS & TEXAS RAIL-
WAY COMPANY,
THE ST. LOUIS & SAN FRANCISCO RAIL-
ROAD COMPANY,

By COLIN C. H. FYFFE, *Their Attorney.*

WILLIAM D. McHUGH,
COLIN C. H. FYFFE,

Attorneys and of Counsel for Petitioners.

72

Oath.

STATE OF ILLINOIS,

County of Cook, ss.:

E. B. Boyd, being first duly sworn, on oath deposes and says that he is the assistant to the vice-president of the Missouri Pacific Railway Company, one of the petitioners in the petition to which this affidavit is attached, that he has read the said petition and knows the contents thereof and that the allegations thereof are true except where stated upon information and belief, and as to such allegations affiant believes them to be true.

(Signed)

E. B. BOYD.

Subscribed and sworn to before me, a notary public in and for the County of Cook and State of Illinois, this 16th day of September, A. D. 1908.

[NOTARIAL SEAL.] (Signed) CORNELIUS LYNDE,
Notary Public.

(Endorsed:) Filed, October 17, 1908. H. S. Stoddard, Clerk.

73 And on the same day to-wit: on the seventeenth day of October, 1908, a certain Chancery Subpœna issued out of the Clerk's office of said court direct- to the Marshal of the District of Columbia to execute. Which said subpœna, together with the Memorandum thereto attached and the Marshal's return thereon endorsed, is in the words and figures following to-wit:

74 UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss.:

The United States of America to Interstate Commerce Commission,
Greeting:

We command you and every of you, That you appear before our Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on the first Monday in the month of December next, to answer the bill of complaint of The Chicago, Rock Island & Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Alpheus B. Stickney & Charles H. F. Smith, Receivers of Chicago, Great Western Railway Company; and Chicago, Great Western Railway Company, this day filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the District of Columbia, to Execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this seventeenth day of Octo-

ber, in the year of our Lord one thousand nine hundred and eight and of our Independence the 133rd year.

[SEAL.]

H. S. STODDARD, *Clerk*,
By JOHN H. R. JAMAR, *Chief Deputy*.

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago, aforesaid, on or before the day to which this Writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

H. S. STODDARD, *Clerk*,
By JOHN H. R. JAMAR, *Chief Deputy*.

75 *Marshal's Return on Chancery Subpœna.*

"Served copy of within subpœna on Interstate Commerce Commission by service on E. A. Moseley, its Secretary, Oct. 19, 1908.

AULICH PALMER,
U. S. Marshal, Dist. of Columbia.

(Endorsed:) Filed Oct. 21, 1908, H. S. Stoddard, Clerk.

76 And afterwards, to-wit: on the twenty-fourth day of October, 1908, there was filed in the Clerk's office of said court a certain appearance in words and figures following to-wit:

77 *Appearance of Defendant.*

In the Circuit Court of the United States of America, Northern District of Illinois, Eastern Division.

29247.

CHICAGO, ROCK ISLAND & PACIFIC RY. Co. et al., Complainants,
vs.

INTERSTATE COMMERCE COMMISSION, Defendant.

I hereby enter the appearance of the Interstate Commerce Commission, defendant in the above entitled cause, and of myself as its solicitor.

LUTHER M. WALTER,
Solicitor for Interstate Commerce Commission.

(Endorsed:) Filed Oct. 24, 1908, H. S. Stoddard, Clerk.

78 And on to-wit: the twenty-sixth day of October, 1908, there was filed in the clerk's office of said court in said entitled cause a certain Expediting Certificate of the Attorney General, in the words and figures following to-wit:

79

Expediting Certificate of Attorney General.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

VS.

THE INTERSTATE COMMERCE COMMISSION.

To the Clerk of said court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by The Chicago, Rock Island and Pacific Railway Company, et al., against the Interstate Commerce Commission, under the Act of Congress entitled "An Act to Regulate Commerce", as amended by the Act of June 29, 1906, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the Act of Congress entitled "An Act to Expedite the Hearing and Determination of Suits in Equity pending or hereafter brought under the Act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', 'An Act to Regulate Commerce', approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted", approved February 11, 1903; and in further compliance with the provisions contained in Section 16 of the "Act to regulate commerce", approved June 29, 1906, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the Circuit Judges of the Seventh Circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable date before not less than three of the Circuit Judges of said Circuit, as is provided by the said Act of February 11, 1903.

CHARLES J. BONAPARTE,

Attorney General.

Washington, D. C., October 22, 1908.

(Endorsed:) Filed Oct. 26, 1908, H. S. Stoddard, Clerk.

80 (A certified copy of the Expediting Certificate of the Attorney General filed in the clerk's office of said Court, on the twenty-sixth day of October, 1908, was duly delivered to the four United States Circuit Judges for the Seventh Judicial Circuit.)

81 And afterwards to-wit: on October 30, 1908, comes the defendant by its solicitor and files in the Clerk's office of said court, its certain answer in words and figures following to-wit:

82

Answer of Interstate Commerce Commission.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHICAGO, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Northwestern Railway Company, and Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company,

v.

INTERSTATE COMMERCE COMMISSION.

The Answer of the Interstate Commerce Commission.

This defendant, the Interstate Commerce Commission, now and at all times hereafter, saving to itself any and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto or so much thereof as this defendant is advised is material or necessary for it to make answer, answering, says:

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That this defendant is a bureau or department of the Government of the United States, which has created and established and now exists under and by virtue of an act of the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by subsequent acts, and particularly as amended by the act of June 29, 1906, and that the complaint, Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa; the complainant, Chicago, Burlington & Quincy Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; the complainant, Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin; the complainant, Chicago & Northwestern Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; the complainants, Alpheus B. Stickney and Charles H. F. Smith, receivers of the Chicago Great Western Railway Company; and the complainant, Chicago Great Western Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, are common carriers engaged in the interstate transportation of passengers and property wholly by railroad or partly by railroad and partly by water, and as such common carriers and in respect to such transportation are subject to the provisions of said act, entitled "An act to regulate commerce," as amended by said act of June 29, 1906.

84

II.

That by section 12 of said act this defendant is given authority to inquire into the management of the business of all common carriers subject to the provisions of said acts, and is required to keep itself informed as to the manner and method in which the same is conducted, and is "authorized and required to execute and enforce the provisions of" the act; and that among the provisions of the act which this defendant is authorized and required to execute and enforce are the provisions of section 1 thereof, which declares that "all charges made for any service rendered or to be rendered in the transportation of passengers or property, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or *any part thereof* is prohibited and declared to be unlawful."

III.

That by section 13 of said act, as amended, it is provided that, among others, any person or corporation, or association, or mercantile, or manufacturing society may make complaint to this defendant by petition, briefly stating the facts, "of anything
85 done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof;" that a "statement of the charges thus made shall be forwarded" by this defendant "to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified" by this defendant; that if such common carrier "shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty" of this defendant "to investigate the matters complained of in such manner and by such means as it shall deem proper."

That by section 14 it is provided that whenever an investigation shall be thus made by this defendant "it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions" of this defendant, "together with its decision, order or requirement in the premises;" and that all reports of investigations made by this defendant "shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of."

That by section 15 it is provided that this defendant "is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section 13" thereof, "it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or
86 carriers," subject to said acts, "for the transportation of persons or property as defined in the first section" of said acts "are unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or prejudicial, or otherwise in violation of any of the provisions" of said acts, "to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged;" "and

to make an order that the carrier shall cease and desist from such violation, to the extent to which" this defendant "find- the same to exist and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed."

That by section 16 it is provided that every order of this defendant "shall be forthwith served by mailing to one of the principal officers or agents of the carrier at his usual place of business a copy thereof, and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail;" and this defendant is "authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper."

IV.

Defendant says that the complainants should not be heard to maintain this suit in equity, for that the said complainants have a complete and adequate remedy by proceedings before the Interstate Commerce Commission, in that all the matters and things in the complainants' bill of complaint set forth are cognizable before the Interstate Commerce Commission; that upon application of the complainants or any of them and upon proper showing, the Commission has power to suspend, modify, or amend in whole or in part the order complained of and to consider any and all of the matters in the complainants' bill of complaint set forth and to take such action thereon and to make such order thereon as in its judgment would be proper to make; and that in advance of such application by the complainants to the Interstate Commerce Commission the complainants are not entitled as a matter of right to invoke the equitable jurisdiction of this court. That this court, sitting as a court of equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before the Interstate Commerce Commission at the time of said hearing, nor on account of any facts, matters, or things which may have arisen since said hearing, without first by an application for rehearing or otherwise having presented such facts and matters to the Interstate Commerce Commission; neither does said bill of complaint set forth any reason why any of such matters and things could not be or were not presented to the Interstate Commerce Commission, nor that any facts have arisen since the said hearing, nor that the complainants or either of them have in any manner been prevented from presenting to the Interstate Commerce Commission for its consideration any of the matters or things in the complainants' bill of complaint set forth. The complainants have failed to make any application to the defendant for a rehearing of said cause on account of any such facts or to have said order suspended, set aside, or modified, although the complainants well knew at all times since June 24, 1908, the date of the report of the Commission, that the order complained of would be issued as a matter of course, unless, upon application of the complainants herein (defendants before the Commission), such facts should be

shown to this defendant as would entitle the complainants to have the same set aside.

V.

This court ought not consider the averments in the complainants' bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation, or will entail a loss, or that the same are unreasonably low, or that the said rates are unjust or unreasonable, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement or any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined. This defendant further says that the complainants do not aver in their bill of complaint that they or either of
89 them are in possession of any information or facts upon which to base the said conclusions, other than the facts which they severally presented before the Interstate Commerce Commission in the hearing complained of; nor that the complainants or either of them are in possession of any facts or information to justify the conclusion that the original scale of rates from the Mississippi River crossings to Missouri River points were just and reasonable, other than the evidence which they presented before the Interstate Commerce Commission on the hearing complained of, and all which facts and evidence *was* presented by the complainants to the said Interstate Commerce Commission and was by it duly considered. Defendant shows that to enable it to perform its duties all such information as shows the operations and operating results of each railway is required to be filed with this defendant, and the subject is under constant investigation; that the ascertainment mathematically of what it costs to haul a given quantity of traffic of a certain description between two points upon a certain line of railway is impossible; that over the same line of railway hauled by the same engine are carried in the same train traffic in varying quantities, widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains; that the fixed charges of maintenance and operation cannot be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same
90 train over the same line of railway are hauled both interstate and intrastate traffic; that the cost of operation and of handling these two classes of traffic can not be mathematically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost or expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road, with the volume, density, and direction of movement; that no method of apportionment between different articles of freight can be devised except that which involves the exercise of judgment, and results vary according to the method used.

The defendant therefore says that the statements and allegations of the bill above complained of are mere conclusions and opinions

which necessarily involve consideration of all these complex and difficult problems and should not be accepted for the purpose of setting aside the order of this defendant.

VI.

Defendant admits all of the allegations of paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, and XI, down to line 19 on page 6 of the bill of complaint herein. Defendant says that the paragraphs of the bill of complaint are not numbered and that the defendant has therefore counted each separate paragraph and given it a number in progressive series. Defendant denies that the rates established by complainants and in force and effect at the time said order complained of by these complainants as made were or are just and reasonable and that the same yield to complainants no more than is a fair and proper return for the service involved in said transportation. This defendant avers that the rates complained of before this Commission and in effect at the time of the making of the order herein, so far as such rates apply to the transportation of through shipments from Atlantic seaboard points between Mississippi River crossings and Missouri River cities, were and are unjust and unreasonable and yielded to complainants far more than a fair and proper return for the service involved in said transportation and subjected shippers for whom traffic was transported as aforesaid to the payment of unjust and unreasonable rates.

Defendant denies that the expense to the complainants for handling and transporting freight from the Atlantic seaboard, delivered to the complainants either at Chicago or Mississippi River crossings, and consigned to Missouri River points, exceeds the cost to the complainants of local freight delivered to them either at Chicago or Mississippi River crossings, to be transported to Missouri River points, and denies each and singular of the averments in the complainants' bill of complaint relating thereto. Defendant avers that, on the contrary, it costs less to complainants to handle merchandise delivered to them at the Mississippi River points or at the city of Chicago by eastern lines to be transported as part of a continuous movement from said Atlantic seaboard points to Missouri River points than it costs to complainants to haul traffic locally from said Mississippi River crossings or the city of Chicago to said Missouri River cities; that it is a recognized principle in fixing rates for the movement of traffic that through shipments should be carried at a less rate than local shipments passing between points each constituting a portion only of the through line. This defendant further avers that in the proceeding before the Interstate Commerce Commission none of the complainants herein pleaded in their answers nor offered evidence tending to show that the Atlantic coast business or any class or kind of through business cost the complainant railroads an equal or greater sum of money to handle and transport from the Mississippi River crossings to Missouri River points than business originating at Chicago or Mississippi River crossings and consigned to or carried to Missouri River points. Neither do the said pleadings aver that they have come into possession of such in-

formation since the hearing of said cause before the Interstate Commerce Commission nor plead any excuse for not having presented such claim and information before the Interstate Commerce Commission at the time of the said hearing if said averments in their bill of complaint be true.

VII.

Defendant further says that on February 11, 1907, the complaint filed before this defendant by said Burnham, Hanna, Munger
93 Drygoods Company, et al., alleged that complainants were engaged in business at Kansas City and St. Joseph, in the State of Missouri, and Omaha in the State of Nebraska; that said points were known as Missouri River cities; that complainants received large shipments of articles of freight from Atlantic seaboard points, and points west thereof and east of Chicago, carried by complainants herein from Chicago through Mississippi River crossings to said Missouri River cities; that the standard all-rail through rates from New York City to said Missouri River points were as follows: \$1.47, \$1.20, 93, 68, and 57 cents per 100 pounds, respectively, for first-class, second-class, third-class, fourth-class, and fifth-class; that said through rates from New York to said Missouri River points were arrived at by adding to the rates from Mississippi River points, which were: 60, 45, 35, 27, and 22 cents on the first five classes of freight, respectively, the following rates subject to Official Classification: 87, 75, 58, 41, and 35 cents per 100 pounds for said five classes, respectively; that in the division of said through rates from Atlantic seaboard to said Missouri River cities, each of the defendant railroad companies allowed and paid to eastern connections for the movement up to Chicago: 72.3, 62.4, 48.4, 34.3, and 29.4 cents per 100 pounds on the said five classes, respectively; and that each of said defendants charged, accepted, and retained as their respective shares of said through rates upon said classes as aforesaid, the sum of: 74.7, 57.6, 44.6, 33.7, and 27.6 cents per 100 pounds.

94 The complaint further charged that said through rates from Atlantic seaboard points to said Missouri River cities unjustly discriminated against said Missouri River cities and unduly prejudiced said Missouri River cities in comparison with the rates from said Atlantic seaboard points to St. Paul and Minneapolis, which latter rates were, on the first five classes of freight, respectively \$1.15, 99, 76, 53, and 46 cents per 100 pounds.

The complaint further charged "that the through rates charged from the Atlantic seaboard to said three cities, Omaha, St. Joseph, and Kansas City—to wit, \$1.47, \$1.20, 93, 68, and 57 cents per 100 pounds for the said five classes of freight matter, respectively—are unjust, unreasonable, excessive, and discriminatory against and prejudicial to these complainants, and each of them; and that the said sums charged, accepted, and retained by the defendant companies, respectively, on said through rates from the Atlantic seaboard via Mississippi—to wit, 60, 45, 35, 27, and 22 cents per 100 pounds, and 74.7, 57.6, 44.6, 33.7, and 27.6 cents per 100 pounds via Chicago for said five classes, respectively—are excessive, unjust, unreasonable, in and

of themselves, because said sums and rates are higher and greater than are reasonably necessary to pay the cost of transportation, maintenance, and a fair profit on a fair valuation of the property of the defendant companies employed in transporting said freight between said points, and are unjustly discriminatory against and prejudicial to these complainants and each of them."

95 In the prayer for relief in the complaint before this defendant, complainants asked that defendants be required to desist from charging the through rates on the first five classes of \$1.47, \$1.20, 93, 68, and 57 cents per 100 pounds, and from accepting the proportion on such through rate on business moving via Chicago of 74.7, 57.6, 44.6, 33.7, and 27.6 cents per 100 pounds, and via Mississippi River of 60, 45, 35, 27, and 22 cents per 100 pounds for said five classes of freight respectively.

And the prayer further asked that this defendant order the railroad companies, complainants herein, to establish through rates from the Atlantic seaboard to the Missouri River cities, which through rates should not exceed \$1.10, 95¼, 72½, 51½, and 44 cents per 100 pounds for the five classes, respectively.

In the answer filed by the defendants before the Commission the carriers specifically denied that there was any discrimination against the Missouri River cities by reason of the rates from the Atlantic seaboard points to said Missouri River cities as compared with the rates from said seaboard points to St. Paul and Minneapolis, Minn.

The answer further denied that the proportion of said through rates charged, accepted, and retained by carriers between Chicago and Missouri River points on through traffic originating at said seaboard points, carried through Chicago and said Mississippi River points to said Missouri River points, were in any respect unjust, unreasonable, or unduly prejudicial, or unjustly discriminatory against complainants before this defendant.

96 In the answer of one of the defendants, to wit, the Chicago, Burlington & Quincy Railroad Company, one of the complainants herein, it was averred that rates to the Pacific coast through said Missouri River cities were controlled, established, and fixed by water competition over which said Chicago, Burlington & Quincy Railroad Company had no control, and that that company in order to participate in traffic to Pacific coast points, which traffic was alleged to be of great volume and importance in value, and upon which traffic that company "is enabled to make some profit," had been obliged to make a per ton per mile rate less than the per ton per mile rate enjoyed by the plaintiffs before the Commission on traffic originating at Atlantic seaboard points and carried to Missouri River city points.

Defendant further avers that thereafter a full hearing was had before this defendant at which evidence was offered, both oral and documentary, by complainants before this defendant, and by defendants (complainants herein) before this defendant; that oral argument was had; that printed briefs were filed by each of the parties before this defendant; that defendants before the Commission, complainants herein, did not ask to have other evidence received than that which was before this defendant; that this defendant, in arriving at the

97 conclusion contained in the report filed with the bill and made a part thereof as Exhibit B to the bill of complaint, gave full consideration to all facts and arguments submitted to it by either party to the complaint before this defendant, to all reports filed with this defendant by the complainants herein in accordance with the statutes in such cases made and provided; and that its order complained of herein was made in accordance with the provisions of the statute and does not deprive the complainants herein of any right under the statute or under the Constitution of the United States; and that some of the facts upon which this defendant's order is based are as hereinafter set forth.

VIII.

That parties complainant before this defendant are individuals, partnerships, and corporations engaged in the jobbing trade at Kansas City and St. Joseph, in the State of Missouri, and at Omaha, in the State of Nebraska, to which points they ship via lines of defendants (complainants herein) large quantities of goods of the first five classes of freight from the Atlantic seaboard and from which points they distribute such goods throughout a large territory to the Southwest, West, and Northwest, and also in a comparatively small territory east of said points. As an example of the amount of business done by complainants' three wholesale dry goods houses at Kansas City, four at St. Joseph, and two at Omaha, do an aggregate annual business of about \$40,000,000. Inbound freight charges to these nine wholesale houses amount to about $3\frac{1}{4}$ per cent of the total sales.

98 Sioux City, in the State of Iowa, by certain shipping interests there, filed a petition before this defendant and asked to be heard in support of complainants' petition for a reduction in rates. As railroads were built into territory between the Mississippi River and points beyond, the through rates from points on the Atlantic seaboard to final destination were determined by adding to the joint through rate from the Atlantic seaboard to Mississippi River crossings another rate based on the charge for carrying traffic from said Mississippi River crossings to points beyond. This system of making rates has long been in effect, and is the system by which the rates complained of to the Missouri River cities are arrived at. Rates from New York to the Mississippi River crossings were fixed by the establishment of the New York-East St. Louis rate at 116 per cent of the New York-Chicago rate. This percentage was arrived at because the mileage from New York to East St. Louis is substantially 116 per cent of the mileage from New York to Chicago, East St. Louis being a Mississippi River crossing and the rates having been established at 116 per cent of the New York-Chicago rates. Rates from New York to all other Mississippi River crossings north to and including East Dubuque, Ill., were fixed the same as to East St. Louis on traffic moving through such points to points beyond. On this basis of calculation the present through rate from New York to Mississippi River crossings was fixed, in cents per 100 pounds, on the first five classes, at 87, 77, 58, 41, and 35, respectively. Said rates from New York to said Mississippi River crossings are

joint through rates. To the tariffs fixing these rates complainants are parties along with the carriers operating between New York and Chicago.

The local class rates under Western Classification applying from the several Mississippi River crossings on traffic moving through them from New York and destined to Missouri River cities were at the time of making complaint herein, on the first five classes, in cents per 100 pounds, 60, 45, 35, 27, and 22, respectively. It is therefore apparent that the through class rate from New York to the Missouri River cities is made by combination of the class rates to the Mississippi River crossings applicable on business beyond and the class rates from the Mississippi River crossings to the Missouri River cities, and results in class rates on through shipments, in cents per 100 pounds, on the first five classes, of 147, 120, 93, 68, and 57, respectively.

These rates apply on traffic moving via Chicago. The rates west of the Mississippi River crossings above referred to—to wit, 60, 45, 35, 27, and 22 cents—are not constructed upon percentages of the New York-Chicago rates or upon any other percentage basis. Such rates are the independently established class rates applying between Mississippi River crossings and the Missouri River crossings and are made without reference to any method employed in fixing the rates from the Atlantic seaboard to the Mississippi River crossings.

100 These rates apply to all kinds of traffic carried by complainants from Mississippi River crossings to the Missouri River crossings without reference to whether the traffic originates at Atlantic seaboard points or at said Mississippi River crossings. The rates from New York to said Mississippi River crossings above referred to are joint through rates. The local rate on said classes from New York to Chicago is 75, 65, 50, 35, and 30 cents on the first five classes respectively. The local rates from Chicago to the Mississippi River crossings on the first five classes of freight are 38.4, 30.7, 73.8, 19, and 15.3 cents.

That the distances from New York to Kansas City, St. Joseph, and Omaha by the lines of complainants herein are shown by the following table:

Distance from New York City.

By way of—	To Kansas City.	To St. Joseph.	To Omaha.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
C., R. I. & P. Ry.....	1,439	1,410	1,415
C., B. & Q. R. R.....	1,400	1,382	1,408
C., M. & St. P. Ry.....	1,410	.....	1,404
C. & N. W. Ry.....	.....	.....	1,405
C. G. W. Ry.....	1,509	1,440	1,415

The Chicago, Milwaukee & St. Paul Railway, one of the complainants herein, does not reach St. Joseph, Mo.; the lines of the Chicago & Northwestern, one of the complainants herein, do not reach either Kansas City or St. Joseph, Mo. All the other complainants reach all three points. That traffic of the first five classes moving from points east of Chicago over the lines of complainants herein to points
101 at and beyond the Missouri River cities is carried over the same line of railroad by the same motive power, in the same trains, and by the same train crews as is traffic carried locally between the Mississippi River crossings and the Missouri River cities. That the cost of service or expense to complainants herein in transporting traffic shipped from Atlantic seaboard points to Missouri River cities is not greater than the cost of service or expense to complainants in transporting traffic originating at Chicago or Mississippi River crossings to Missouri River cities. That complainants charge, accept, and retain for carrying transcontinental traffic originating at Atlantic seaboard and destined to Pacific coast terminals for movement between Chicago and Missouri River cities, on the first five classes, in cents per 100 pounds, 33, 28½, 24.75, 22½, and 19½, respectively. That complainant, Chicago, Burlington & Quincy Railroad Company, in answering the complaint before this Commission hereinbefore referred to admitted that said amounts afforded to said complainant (defendant before the Commission) a compensation which "enabled it (complainant) to make some profit." That the service, so far as cost or expense to complainants herein, is not greater in the case of traffic of the first five classes handled by complainants when such traffic originates at Atlantic seaboard points and is destined to Missouri River cities than when such traffic is destined to Pacific coast points. That complainants receive, collect, and retain for transporting traffic of the first five classes originating at Atlantic seaboard points, consigned to Montana common
102 points and Spokane common points, for transporting such traffic from Chicago to Missouri River crossings over the same lines of railroad as when such traffic originates at Atlantic seaboard points and is destined to Missouri River crossings on the first five classes, in cents per 100 pounds, about 40, 34, 26, 18, and 16, respectively.

That complainants charge, accept and retain for transporting traffic originating at Chicago and destined to Oklahoma common points, transported over the lines of complainants from Chicago to Missouri River points, on the first five classes, in cents per 100 pounds, 48, 41.3, 34.2, 29.5, and 23, respectively. That complainants charge, accept, and retain for transporting traffic of the first five classes originating at Pittsburg and carried through Chicago from Chicago to Missouri River points, in cents per 100 pounds, 41.8, 37.1, 30.2, 25.9, and 20.6, respectively. That complainants charge, accept, and retain on the first five classes of freight originating at Chicago and destined to Texas common points, when transported from Chicago to said Missouri River cities, in cents per 100 pounds, 47.1, 41.1, 34.8, 31.8, and 24.6, respectively. That the rate charged, accepted, and retained by complainants herein for

their proportion of the joint through rate on shipments originating at Atlantic seaboard points, carried from Chicago to said Mississippi River points, by complainants herein, is, in cents per 100 pounds, as follows: 14.7, 12.6, 9.6, 6.7, and 5.6, respectively.

103 That the average distance from complainants' lines from Chicago to said Mississippi River points is about 180 miles. That the principal common carriers operating between New York and Chicago are the Lake Shore & Michigan Southern Railway, New York Central & Hudson River Railroad, Pennsylvania Railroad, and Pittsburgh, Cincinnati, Chicago & St. Louis Railway. That the average freight earnings per ton per mile during the year ending June 30, 1906, of said last-named carriers is as follows:

	Cents.
L. S. & M. S. Ry.....	0.516
N. Y. C. & H. R. R. R.....	.625
P. R. R.....	.588
P., C., C. & St. L. Ry.....	.635

That the average freight earnings per ton per mile for the year 1906 of the complainants herein was as follows:

	Cents.
C., B. & Q. R. R.....	0.804
C., M. & St. P. Ry.....	.862
C., R. I. & P. Ry.....	.930
C. & N. W. Ry.....	.888
C. G. W. Ry. ....	.688

And for the same roads during the year 1907:

	Cents.
C., B. & Q. R. R.....	0.787
C., M. & St. P. Ry. ....	.856
C., R. I. & P. Ry. ....	.953
C. & N. W. Ry. ....	.904
C. G. W. Ry. ....	.656

That the gross earnings, operating expenses, net earnings, and surplus of the complainant roads here, as shown by their reports to this defendant, for the years 1906 and 1907, were as shown

104 by the following table:

1906.

	Gross earnings.	Operating expenses.	Net earnings.	Surplus.
C., B. & Q.....	\$72,803,350	\$50,045,125	\$22,758,224	\$5,094,182
C., M. & St. P.....	55,607,442	34,897,991	20,709,450	3,246,997
C., R. I. & P.....	48,919,098	34,202,032	14,717,065	* 48,224
C. & N. W.....	63,481,578	39,890,999	23,590,578	2,316,639
C. G. W.....	8,319,918	6,264,841	2,055,077	184,472

* Deficit.

1907.

C., B. & Q.....	\$80,951,635	\$57,430,823	\$23,520,812	\$5,383,193
C., M. & St. P.....	60,744,277	39,596,132	21,148,144	5,072,463
C., R. I. & P.....	55,538,487	38,566,096	16,972,391	4,477,466
C. & N. W.....	68,878,931	44,789,025	24,089,905	7,830,388
C. G. W.....	8,897,481	7,075,395	1,822,085	432,859

That the defendants before this Commission (complainants herein) well knew that the facts above shown in this paragraph had been proven before this Commission, yet with full knowledge of said facts failed, neglected, and omitted to show to this defendant in any wise what differences in cost or expense or otherwise there was between the service rendered by said complainants in transporting the various classes of traffic when originating at Atlantic seaboard points and destined to Mississippi River crossings, to Missouri River cities, to Texas common points, to Colorado common points, to Montana and Spokane common points, and to Pacific coast terminals.

That this defendant found from all the facts and circumstances that the rates charged, accepted, and retained by complainants herein for transporting traffic of the first five classes between Mississippi River points and Missouri River points, when such traffic originated at Atlantic seaboard points, was unjust and unreasonable and extortionate to the extent that the same exceeded the following, in cents per 100 pounds, 51, 38, 30, 23, and 19, respectively. Neither of the parties complainant or defendant in the proceedings before the Interstate Commerce Commission pleaded that the amount charged, received, and retained by the eastern roads on Atlantic seaboard business from the Atlantic seaboard to Chicago and the Mississippi River crossings was excessive, unjust, or unreasonable, and none of the complainant railroad companies in this case made any claim, either by the introduction of evidence or in argument, that the amount charged, retained, and received by the said eastern railroads on Atlantic seaboard business was excessive, unjust, or unreasonable. Neither did the complainants in said proceedings before the Interstate Commerce Commission seek for any reduction of the amount charged, retained, and received by the eastern rail-

roads on said Atlantic seaboard business. To the contrary, it seemed to be admitted and conceded by all the parties in interest that the rates charged, retained, and received on the said business by the said eastern roads was fair and just and reasonable, and the relief sought in said proceedings before the Interstate Commerce Commission was directed solely against the separately established rates and charges of the complainant railroad companies herein for the rates charged, received, and retained by them on said business west from Chicago and between Mississippi River crossings and Missouri River points. That no evidence was presented to this defendant that that portion of the through rate which covered the transportation of such traffic from New York and other seaboard points to Mississippi River crossings was in any wise in violation of any of the provisions of the statute, and that, therefore, this defendant dismissed complaint as to carriers participating in said movement from said seaboard cities to Mississippi River crossings.

That after complaint had been made to this defendant, the Chicago & Northwestern Railway Company, one of the complainants herein, filed with this defendant an amended answer suggesting the names of various carriers which should be made parties defendant; that said lines of carriers did not embrace either the Atchison, Topeka & Santa Fe Railway, the Chicago & Alton Railroad, the Missouri Pacific Railway, the Missouri, Kansas & Texas Railway, the St. Louis & San Francisco Railway, or any of them. That the rates complained of by complainant before this defendant had been in existence substantially for a period of almost twenty-five years; that during that time the cost of operating by complainants has been materially reduced, minimum carloads have been increased, the drawing power of locomotives has largely increased, roadbeds have been materially strengthened, train loads have been largely increased, so that a complainant by the expenditure of a given amount of money to-day can haul a much larger amount of traffic than could have been hauled at the time when rates were originally put in effect. That the amount of traffic moving between the points mentioned herein has increased manifold since the rates originally were put into effect. This increase in the amount of traffic, keeping pace with the increase in population of the Missouri River cities and adjacent territory, should have had a natural tendency to have decreased said rates, but the fact appears from the evidence in said proceedings before the Interstate Commerce Commission that said rates have rather increased than decreased during the last seventeen years, and the respective railway companies offered no evidence in said proceedings to justify the continued maintaining of the said rates which had been established prior to the seventeen years last above mentioned. That this defendant's order herein does not interfere in any wise with the principle of rate making which complainants have established and maintained in force and effect for many years. That the complainant railroad companies have from time to time, as shown by the statements, *supra*, in this answer, charged less rates to one class of shippers than to another class of shippers, and have charged less rates on through business than on local business, and have charged less rates on commodities shipped

from certain points and consigned to other points than on other merchandise of the same class and character passing over the same line of road and between points over which both of said classes of tonnage were transported, and many times have departed from the local rate and granted a less rate than the local rate to shipments destined to various western points, as instanced by shipments consigned to Texas common points, and to Oklahoma common points, and to Washington and Spokane common points, as heretofore referred to in this answer. But the said complainant railroad companies have at all times refused and still refuse to make any departure from or reduction from the local rates between Mississippi River crossings and Missouri River points, and by reason whereof the Interstate Commerce Commission, finding that said rates from the Mississippi River crossings to the Missouri River points on Atlantic seaboard business were unjust and unreasonable, made the reduction set forth in defendant's last order. If it be true, as averred in complainants' bill of complaint, that the local rates between the Mississippi River crossings and the Missouri River points are necessarily dependent upon the rate which the railroad commission of the State of Missouri has established between St. Louis and Kansas City and St. Joseph on the Missouri River, it follows that the complainant railroad companies have been and still are charging the maximum rate which they are permitted to charge and are applying the said maximum rate to the Atlantic seaboard business between Mississippi River crossings and Missouri River points, and are not making any allowance and reduction arising out of the fact that said business is through business and not local business. The complainant railroad companies herein did not plead or offer any evidence to prove, in the proceedings before the Interstate Commerce Commission, that there existed any such difference in conditions of cost of transportation that justified the high rate between the Mississippi River crossings and the Missouri River points as compared to the rates charged by the eastern railroads on the same business between the Atlantic seaboard and the Mississippi River. That the complainant railroad companies herein admitted and conceded, in the proceedings before the Interstate Commerce Commission, that the through rate from the Atlantic seaboard to the Mississippi River was, in cents per 100 pounds, 87, 75, 58, 41, and 35 on the first five classes, and that the portion thereof retained by these complainant railroad companies for the haul from Chicago to the Mississippi River was 14.7, 12.6, 9.6, 6.7, 5.6 cents on the first five classes, respectively, and neither pleaded or offered evidence to prove that any conditions existed which justified a rate so disproportionate to the rate last above stated, as the rate from the Mississippi River crossings to the Missouri River points, to wit, in cents per 100 pounds, 60, 45, 35, 27, and 22 on the first five classes, respectively. The complainants in their bill of complaint charge that the order of the Commission is invalid and beyond the power and authority vested in the Commission, in that it requires the complainant railroad companies to transport freight for one class of shippers at a less rate than is charged by the said railroad companies to other classes of shippers.

Whereas, if the Commission had made an order in the form and on the principle so charged by the complainants it might have ordered the said railroad companies to transport freight from the Atlantic seaboard to the Mississippi River crossings and the Missouri River points for the sum of money charged, retained, and received by the said railroad companies on transcontinental business passing over the same railroads and between the same points from the Mississippi River and the Missouri River, to wit, in cents per 100 pounds, 33, 28.50, 24.75, 22.50, and 19.50 on the first five classes, respectively. Whereas the Commission by its order permitted the said railway companies to charge a higher rate, to wit, 51, 38, 30, 23, and 19 cents, plus the rate from Chicago to the Mississippi River crossings, as a division of the joint rate accruing to complainant carriers on said business of 14.7, 12.6, 9.6, 6.7, and 5.6 cents on the first five classes, respectively, or a total from Chicago to Missouri River points, in cents per 100 pounds, of 65.7, 50.6, 39.6, 29.7, and 24.6 on the first five classes, respectively. In other words, the order of the Commission allows said railroad companies on Atlantic seaboard business destined to Missouri River points to charge 100 per cent more than the same railroad voluntarily charges on transcontinental business.

111 It further appeared in the evidence before the Interstate Commerce Commission that each and singular of the said low rates charged by the complainant railroad companies as a proportionate part of the through rate from the Atlantic seaboard to the Mississippi River and on the rate charged by the complainant railroad companies over the said lines of road on freight destined to through points, as hereinbefore pleaded, yielded to the complainant railroad companies some profit, and that said fact was admitted and conceded by expert witnesses testifying in behalf of the complainant railroad companies. And it further appeared from said evidence before the Interstate Commerce Commission in said proceedings that the rates charged by the complainant railroad companies on Atlantic seaboard business between Mississippi River crossings and Missouri River points exceeded each of said rates above mentioned more than 50 per cent and about 100 per cent greater than charged on the transcontinental business between Chicago and the Missouri River points. And one of the witnesses for the complainant railroad companies testified affirmatively that the railroad companies did make a profit over and above the cost of transportation, including operative expenses on said transcontinental business, and another witness for the complainant railroad companies and the vice-president thereof testified as an expert that a rate 50 per cent higher would be "too large, of course."

112

IX.

Defendant denies that the rates established by complainants herein, which were complained of before this defendant, were or are just and reasonable, and denies that such rates yield to complainants only a fair and proper return for the service involved in said transportation. This defendant alleges that the rates so established are

unjust, unre-sonable and extortionate, and that the same yielded to the complainants herein far more than a fair and proper return for the service involved in said transportation.

This defendant denies each and singular of the averments in paragraph 13 of the complainants' bill of complaint found on pages 6 and 7 thereof, and avers that the cost to the complainant railroad companies in receiving, handling, and transporting merchandise from the Atlantic seaboard to Missouri River points, received either at Chicago or Mississippi River crossings, is less than the expense in receiving, handling, and transporting local business received by the said railroad companies either at Chicago or Mississippi River crossings consigned to Missouri River points. Defendant further avers that any cost or expense the complainant railroad companies may be put to at the city of Chicago in receiving freight from the Atlantic seaboard for through transportation to Missouri River points in no wise affects or has to do with the rates between the Mississippi

113 River crossings and Missouri River points or the expense of transporting said freight between the Mississippi River crossings and Missouri River points, and the *the* order of the Interstate Commerce Commission deals only with the rate between the Mississippi River crossings and Missouri River points.

This defendant alleges that in the hearing before this defendant it was made to appear that the total through rate on shipments of the first five classes originating at Atlantic seaboard points and destined to Missouri River points was made up of the joint through rate to the Mississippi River crossings and the local rate from said Mississippi River crossings to said Missouri River cities. As heretofore stated in this answer on request of one of the complainants herein, the Chicago & Northwestern Railway Company, all the carriers operating between said Atlantic seaboard points and Chicago were made parties defendant; that no evidence was offered which showed or tended to show that the rate as made up from Atlantic seaboard points to said Mississippi River crossings, was in any wise unjust and unreasonable or in any wise in violation of the act to regulate commerce as amended; that therefore the complaint before this defendant was dismissed as to such defendants.

Defendant admits the allegations of paragraph 15, page 8, of the bill of complaint and alleges that the order of June 24, 1908, complained of herein, was duly and regularly extended from the 26th day of October, 1908, to November 10, 1908.

114 Defendant admits that the order set forth in paragraph 16, pages 8, 9, and 10, of the bill of complaint, is correctly set forth in said bill of complaint.

Defendant denies that the reduction in the rates now charged and received by complainants so compelled and enforced by said order of this defendant as set forth in the bill of complaint will reduce the revenues of complainants \$500,000 annually; but avers upon information and belief that the reduction will be less than one hundred thousand dollars annually.

Defendant alleges that complainants will not be deprived of any

revenue which complainants lawfully could collect and charge from any shippers of freight referred to in said order.

Defendant alleges that the reduction in revenue is only to the extent of the difference between that which is a just and lawful charge and that which is an unjust and unlawful charge for the transportation affected by said order.

X.

Answering paragraph 18, page 11, of the bill of complaint, defendant denies that if said order goes into force and effect the application of the principle therein contained will necessarily result in the further lowering of the rates now duly received by complainants.

Defendant alleges that if the complainants comply with the letter and spirit of the order complained of herein, they will
115 not reduce their revenues beyond what is necessary in order to charge no more than just and reasonable rates on whatever traffic the principle may affect.

Defendant alleges that the fullest compliance by complainants with the order complained of herein will not deprive said carriers of any revenue to which they are lawfully entitled.

Defendant reduced the rates complained of between Mississippi River points and Missouri River points, so far as such rates are applicable to through shipments originating at Atlantic seaboard points and destined to Missouri River points. Any higher charge than the rates established in said order are unlawful and subject shippers to an unjust and unreasonable charge, in violation of the act to regulate commerce. If the application of the order and the alleged principle resulting therefrom causes a reduction in the revenues of the complainants to any extent, it is because, and only because, the revenues now collected are unjust, unreasonable, and extortionate.

In answer to paragraph 19 of the bill of complaint, page 11, defendant denies that said order of June 24, 1908, as set forth in the bill of complaint, is unreasonable, unjust, oppressive, and unlawful in excess of the powers conferred on this defendant by the act to regulate commerce; denies that the order complained of prevents
116 complainants from charging reasonable and just rates; denies that the order complained of is in violation of the Constitution of the United States or of the fifth amendment thereof; denies that said order takes the property of complainants without due process of law; denies that the order compels complainants to accept for the transportation of property as set forth in the bill of complaint rates and charges which are not reasonable and fair returns for the services rendered by complainants.

Defendant alleges that the order complained of is just, reasonable, and in no sense oppressive or unlawful, but is a valid exercise of powers lawfully conferred upon defendant and is in accordance with the Constitution of the United States in every respect.

Defendant further alleges that the order complained of was made by this defendant after complainants had been afforded due process of law.

Answering paragraph 20, page 11, of the bill of complaint, defendant denies that the complaint before this defendant was brought on the theory alone that the rates to Missouri River cities were too high in comparison with rates to said twin cities and thereby produced undue discrimination against the Missouri River cities in favor of the said cities.

To the contrary, defendant avers that complaint before the Interstate Commerce Commission affirmatively charged that the rates charged by the railroad companies herein from Chicago and from the Mississippi River crossings to Missouri River points on Atlantic seaboard business were unjust and unreasonable in and of themselves, as more particularly appears in the paragraph of the said complaint more fully set forth in paragraph VII of this answer.

That in support of said averment that said rates were and are unjust and unreasonable in and of themselves, evidence was offered in the proceeding before this defendant to sustain the said averment in the said complaint that the said rates were unjust and unreasonable in and of themselves and that the complainant railroad companies herein did not offer any evidence in said proceedings that said rates were just and reasonable in and of themselves, but rested their defense in the said proceedings upon the fact that the said rates had been in existence for a long period of years, and that to reduce said rates would result in a loss of revenue to the railroad companies and indirectly or incidentally disturb existing transportation rates. In this connection the defendants deny the averments in the bill of complaint herein; that the only evidence offered before the Commission in said proceeding is confined to a comparison of rates between various points. That this defendant examined and considered reports made by complainants herein which fully set forth the financial condition, the cost of service, and returns upon traffic handled by complainants over the very lines over which the through shipments from Atlantic seaboard points to Missouri River cities were carried.

Defendant denies that the Railroad Commission of the State of Missouri has fixed, or could lawfully fix and establish, any rate to apply upon through shipments of traffic from Atlantic seaboard points through Mississippi River points to Missouri River points.

Answering paragraph 22, page 13, of the bill of complaint, defendant admits that the order of this defendant complained of reduces the through rates as now made up and compels new through rates in place thereof by reducing alone the proportion of such through rates received by complainants. Defendant alleges that the through rate as complained of was unjust and unreasonable only because of the unjust and unreasonable rate which was applied on through shipments by complainants herein for the transportation of traffic between Mississippi River points and Missouri River cities.

XI.

Defendant denies that the rates established by the order of this defendant are in effect through joint rates, or are joint rates in any

respect. Defendant alleges that a joint rate is a rate that extends over the lines of two or more carriers and that is made by agreement between all such carriers.

Defendant alleges that the lawfully published tariff rate applicable on through shipments from Atlantic seaboard points to Missouri River points is not a joint through rate; that the rate on said shipments is made up of a joint rate from the Atlantic seaboard points to the Mississippi River crossings, plus a local rate separately
119 established by the complainants from said Mississippi River crossings to Missouri River cities. Defendant alleges that said through rate so made up is not made by agreement of all the carriers carrying such traffic from Atlantic seaboard points to Missouri River cities, and therefore is not a joint rate. Defendant alleges that the rate applicable from Mississippi River points to Missouri River cities is the complainants' separately established rate, fare, and charge applied to through transportation.

Defendant alleges that no joint rate over the through route from Atlantic seaboard points to Missouri River cities has been established by complainants or other carriers applicable on such business.

Defendant denies that in the respect complained of in paragraph 23 (p. 14 of bill of complaint) it exceeded the powers conferred upon it by the act to regulate commerce as amended; denies that it is about to deprive complainants of their property without due process of law in violation of the Constitution of the United States and the fifth amendment thereof.

Defendant alleges that at the hearing before this defendant evidence was offered, heard, and introduced tending to show that said rates were unreasonable, unjust, and unlawful in and of themselves as well as by comparison with other existing rates for an identical service; that complainants herein, defendants before the Commission, were in full possession of all items of cost and expense and of
120 other matters proper to be considered in determining what is a just and reasonable rate, and that each of complainants herein refused, neglected, and failed to present the evidence it had in its possession, if any, tending to show that the rates it had established were just and reasonable in and of themselves.

Defendant alleges that it is a well recognized principle of transportation law that where a carrier has established for identical services different rates, the burden is upon such carrier to show every reason it has for the higher rate for the identical services, and that in the absence of any such showing the higher rate is presumed to be unlawful, unjust, and unreasonable.

Answering paragraph 25, page 15, of the bill of complaint, defendant alleges that in its report it found as follows:

As has been stated, the through rates from Atlantic seaboard territory to the Missouri River cities are made up by adding together the rates from the points of origination to the Mississippi River crossings, using proportional rates when such are available, and the local class rates from the Mississippi River crossings to the Missouri River cities. The through rates so established are in our opinion unreasonably high. This is so because those portions of the

through rates which apply between the Mississippi River crossings and the Missouri River cities are too high. These are defendants' "separately established rates," which are "applied to the through transportation," and therefore the through rates should be adjusted by reduction of those factors or parts thereof which are found to be unreasonable.

121 Out of consideration for long-established custom in rate construction and publication, involving different classifications, we refrain from establishing joint through rates, and, permitting the rates from Atlantic seaboard territory to the Mississippi River crossings to remain as at present, we conclude that the separately established rates of the defendants, Chicago, Rock Island & Pacific; Chicago, Burlington & Quincy; Chicago, Milwaukee & St. Paul; Chicago & Northwestern; and Chicago Great Western railway companies, applied between the Mississippi River crossings and the Missouri River cities to the through transportation of shipments moving under class rates and coming from the Atlantic seaboard, taking New York as representative, should be reduced to the following scale:

Class	1	2	3	4	5
Rate	51	38	30	23	19

and that these rates should also be applied to the transportation of through shipments which move under class rates and which originate at points of origin specified on pages 3 and 4 of complainants' Exhibit A, same being the aforesaid Western Trunk Line Tariff, No. 786, I. C. C., No. 678, or at points taking the same rates.

These rates should also be applied on traffic from same points of origin destined to Sioux City, Iowa, when it moves through any of the Mississippi River crossings, East Burlington to East Dubuque, inclusive.

122 Defendant denies that it held that the said rates should not be lowered for the transportation of merchandise between the said Mississippi River crossings and the said Missouri River cities when the said merchandise so transported was not in course of shipment from the Atlantic seaboard. Defendant alleges that it made no holding whatever as to rates for the transportation of merchandise when such merchandise so transported was not in course of shipment from the Atlantic seaboard.

Defendant denies that the expense to the complainants of the transportation of like merchandise is greater in the case of merchandise shipped from the Atlantic seaboard than in the case of merchandise delivered to complainants for shipment at Chicago or St. Louis; denies that it ordered complainants to transport merchandise shipped from the Atlantic seaboard at a less rate between the Mississippi River crossings and the Missouri River cities aforesaid than that charged to shippers at Chicago or St. Louis for like transportation which involved less expense to complainants.

Defendant denies that its order misapplies the law and compels complainants to serve a certain class of people, to wit, the shippers

of the Atlantic seaboard, at an unreasonably low rate and at a rate lower than is charged shippers at Chicago or St. Louis for like services which involves complainants in less expense.

123 Defendant alleges that the sole and only effect of its order is to compel complainants to reduce their separately established rates as applied to through shipments from the Atlantic seaboard for the transportation of such shipments between Mississippi River crossings to Missouri River cities.

Defendant in answer to paragraph 26, page 17, of the bill of complaint admits that the railroad companies whose names appear in intervening petition, attached as Exhibit C to said bill of complaint, did ask leave to file their petition in the nature of a petition of intervention. Said petition of intervention was received by the said Commission on or about the 18th day of September, 1908, nearly three months after the order of the Commission reducing rates had been made and only six days before the said order was to become effective; that said suit had been pending before the Commission since the 11th day of February, 1907, and from that date until the making of said final order by the Commission the pendency of said proceedings was well known to all the said respective railroad companies who joined in said petition in the form of an intervention, and notwithstanding their full knowledge of the pendency of said proceeding and of the taking of the evidence in the said case and of the time of the argument of said case before the Commission and of the coming down of the said order of the said Commission. The said railway companies seeking to so intervene willfully and knowingly permitted the said proceeding to go on without any

124 complaint upon their part or without any notification to the Commission that they desired to intervene or otherwise to be heard in the said proceedings until the date mentioned *supra*, when they presented their petition in the form of an intervention, and that by reason of the premises and of the laches and negligence of the said railroad companies they were not entitled to have their said petition in the form of intervention recognized by the said Interstate Commerce Commission; that it did not appear from the said petition of intervention that the said railway companies who thus sought to intervene were in possession of any facts or sought to present before the Commission any facts which had not been presented by the railroad companies who were parties to the said proceeding or any evidence which was not considered by the Commission prior to the making of said order. Defendant further avers upon information and belief that the purpose of tendering said petition of intervention at said time was in part for the purpose of securing a postponement of the date when the said order of the Commission reducing rates should become effective.

Defendant further alleges that its order does not operate against any carriers save those parties to the proceeding before this defendant and against whom the order is specially directed.

Defendant further alleges that the complainants herein asked that certain parties be made parties defendant to the proceeding before

125 this defendant but purposely omitted to ask that the parties referred to in said paragraph of the bill of complaint be made parties defendant; that there is a complete harmony of interest between the parties complainant herein and the would-be intervenors is shown by the fact that counsel for complainants in this case were attorneys for said would-be intervenors before this defendant.

XII.

Answering paragraph 27, pages 17 and 18, of the bill of complaint, defendant denies the averments therein and alleges that if the complainants suffer any loss as the result of said order becoming effective, it will be due to the fact that heretofore complainants have, in defiance of law, charged unjust, unreasonable, and extortionate rates to the extent of the reduction caused by the order complained of. Defendant denies that if said order shall be allowed to become effective it will necessarily result in the lowering of rates to be charged by complainants for the transportation of merchandise between said Mississippi River crossings and said Missouri River cities upon all merchandise originating at the Atlantic seaboard. Defendant alleges that if said order becomes effective it will result in the lowering of rates to be charged by complainants only between said points upon merchandise of the first five classes originating at the Atlantic seaboard. Defendant denies that the enforcement of said order will result in a great disturbance of business of complainants and of each of them or in any irreparable loss to complainants or any one of them.

126 Answering paragraph 28 of the bill, defendant alleges that the order complained of is a lawful order and that the same should be allowed to become effective on the date prescribed by this defendant, to wit, November 10, 1908, in accordance with the statute in such cases made and provided. Defendant denies that as a result of said order complainants or any of them will be subject to great multiplicity of suits and to great loss and damage.

Answering paragraph 29, page 19 of the bill, defendant alleges that the order complained of is a lawful order and should be obeyed by complainants herein and that unless such order is enjoined or suspended by the order of this court this defendant will, to the best of its ability, maintain said order as an effective order, as is made its duty by the act to regulate commerce as amended, but denies that it will institute or suffer to be instituted any act or doing contrary to equity and good conscience or that tends to manifest wrong and injury of complainants or anyone else.

Answering paragraph 30, page 19 of the bill of complaint, defendant denies that complainants are only relievable in a court of equity, and avers that complainants have a plain, complete, and adequate remedy by an application by complainants herein for a rehearing before this defendant, as in this answer heretofore pleaded.

Defendant says that the allegations of complainants' bill are vague and uncertain; that they do not set forth facts with sufficient
127 certainty to show the conclusions which are therein stated, to the effect that the rates prescribed by this defendant and

complained of will require a transportation of merchandise at less than the cost of service or at a loss to the carrier, or that the same will be unremunerative or that the same are unjust and unreasonable, and that because of the failure on part of the complainants to specify the particular items of returns from such rates and the particular expenses incident to the transportation of merchandise mentioned in the Commission's order the defendant is unable to know what complainants expect to show at the hearing or otherwise, and on this account is not able to follow or more specifically answer the general allegations and conclusions of the bill of complaint, and the defendant says that it ought not to be required to answer such allegations.

The defendant therefore denies generally each and all of the allegations of complainants' bill of complaint not otherwise specifically denied herein and which the defendant is advised is material or necessary to be answered, and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which it prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in anywise entitled to the relief or any part thereof as prayed for in said
128 bill of complaint, or any relief whatsoever, and the defendant claims the same advantage of this, its answer thereto, as if it had demurred to said bill of complaint, and prays to be dismissed with its reasonable charges in this behalf most wrongfully sustained. In support of the facts pleaded in this answer and in opposition to the granting of the injunction prayed for in the bill of complaint this defendant will produce on this hearing the pleadings, proofs, and briefs presented to the Interstate Commerce Commission by the respective parties in the proceedings before it, or copies thereof.

INTERSTATE COMMERCE COMMISSION,
By EDWARD A. MOSELEY,

Secretary thereof, thereunto duly authorized.

129 WASHINGTON,
District of Columbia, ss:

Edward A. Moseley, being first duly sworn, says on oath that he knows the contents of the foregoing answer and the matters and things stated therein are true to the best of his knowledge and belief.

EDWARD A. MOSELEY.

Subscribed and sworn to before me this the 29th day of October, 1908.

[SEAL.]

H. S. MILSTEAD,
Notary Public.

(Endorsed:) Filed Oct. 30, 1908. H. S. Stoddard, clerk.

130 And on to-wit: the thirtieth day of October, 1908, being one of the days of the Regular July Term of said court, 1908, in the record of proceedings thereof, before the Honorable

Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable William H. Seaman, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

131 *Order of October 30, 1908, Cause Set for Hearing on Bill and Answer.*

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

vs.

INTERSTATE COMMERCE COMMISSION.

Now come the parties by their solicitors and this cause is set down for hearing on bill and answer, and the Court having heard the motion for a preliminary injunction and not being concluded when the hour for adjournment arrived, the further hearing is postponed until to-morrow morning.

132 And afterwards to-wit: on the thirty-first day of October, being one of the days of the Regular July Term of said court, 1908, in the record of proceedings thereof, before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker and the Honorable William H. Seaman, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

133 *Order of October 31, 1908, Cause Taken Under Advisement.*

29247.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

vs.

INTERSTATE COMMERCE COMMISSION.

Now again come the parties by their solicitors and now comes on to be further heard the motion of the complainants for a preliminary injunction and the same being concluded and the Court, not being sufficiently advised in the premises, takes time to consider.

134 And on to-wit: the sixth day of November, 1908, there was filed in the clerk's office of said Court, in said entitled cause a certain Opinion in the words and figures following to-wit:

135

Opinion.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 29247.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

v.

INTERSTATE COMMERCE COMMISSION.

(November 6, 1908.)

William D. McHugh and Colin C. H. Fyffe for complainants and interveners.

John L. Webster and Luther M. Walter for defendant.

Before Grosscup, Seaman, and Baker, Circuit Judges.

Opinion of Court on Application for Preliminary Injunction.

GROSSCUP, Circuit Judge, delivered the following opinion :

There is only one feature of this bill that the court wishes to speak of at this time, and that is the feature that grows out of the fact that under the order of the Commission a rate of 9 cents less is given on first-class matter, and correspondingly on other matter, to traffic originating on the Atlantic seaboard over traffic originating immediately between the Atlantic seaboard and the Mississippi River.

The bill alleges that that is discriminatory, and cites the attention of the court to the opinion of the Commission, in which the Commission frankly and clearly avows that differential of 9 cents on first class and correspondingly on other classes is necessary to preserve to the Missouri River cities the advantage that they are expected to obtain from the reduction put in force; that to make that reduction universal instead of in the way of a differential would be to put the cities east of the Mississippi River upon the same standing, relatively, as the Missouri River cities.

It is on that branch of the case that we speak alone. Whether the bill and the answer, and the opinion of the court, and everything that has been brought to our attention satisfactorily shows that or not is not a question that we intend to pass upon. Our
136 only inquiry now is whether such a prima facie case is made as justifies or requires this court to enter an interlocutory order.

The Interstate Commerce act makes it unlawful for the railroad, the carrier, to make undue preference or unreasonable preference or discrimination between individuals, corporations, distinctive characters of traffic, or localities. The sole question, in applying that act to any given case, is to determine what discrimination is undue or unreasonable.

There is no doubt but what in the case brought to our attention in this bill there is discrimination. But is that undue or unreasonable within meaning of the act? Whether it be undue or unreasonable depends upon so many considerations that there is no one test that applies to it. As between individuals living in the same locality and engaged in the same kind of traffic, and especially or particularly unless one has wholesale traffic and the other has retail traffic, there would be discrimination—undue and unreasonable discrimination—if there was any discrimination. But between localities, as, for instance, St. Paul or Minneapolis on the one hand and the Missouri River cities on another, there might not be undue or unreasonable discrimination because of the accessory fact that St. Paul and Minneapolis had a competitive line by way of the Great Lakes. That is only illustrative of the elements or considerations that enter into the inquiry of what is undue and what is unreasonable.

We think that sufficient has been shown in this bill to require us to grant the interlocutory order. In the first place, there has grown up in this country, on the basis of the old rates, the commerce of the country. We can not overlook that fact. We must take notice of that fact. It is altogether probable, as a part of that fact, that trade houses in this intermediate country have grown up upon the condition that they are given the same relative rates to the western country that the Atlantic coast cities are given to the western country. Then, in addition to that, there is this expression, this express avowal upon the part of the Commission, of the purpose, which shows that there must have been something in the mind of the Commission, some discussion before the Commission, as to what the effect of that differential would be, and the advantage that the Missouri River cities would get by reason of the differential. And, in the hearing, the proposed order was opposed by the chambers of commerce and boards of trade of the cities east of the Missouri River prejudicially affected.

At any rate it disturbs commercial conditions that have grown up through a long line of years upon the basis of the present rates; and we think that is sufficient to require us to restrain its going into effect until the facts come in, that we may determine upon the basis of the facts.

137 & 138 We are not at all deciding that that makes a case for a final injunction, but only a case to preserve the status quo until the case on final injunction is presented to us.

It may be that counsel can agree upon the facts and then submit this case finally, within a very short time, so that it may go to the Supreme Court for a final record, instead of upon this interlocutory order.

The motion is made here for leave to other railroads affected by this order to intervene. That motion is granted.

(Endorsed:) Filed Nov. 6, 1908. H. S. Stoddard, Clerk.

139 And on the same day, to-wit: on the sixth day of November, being one of the days of the Regular July Term of said court, 1908, in the record of proceedings thereof, before the Honorable

Peter S. Grosseup, the Honorable Francis E. Baker, and the Honorable William H. Seaman, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

140

Restraining Order of November 6, 1908.

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, CHICAGO, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Northwestern Railway Company, Alpheus B. Stickner, and Charles H. F. Smith, Receivers of Chicago, Great Western Railway Company, Complainants,

VS.

INTERSTATE COMMERCE COMMISSION, Defendant.

This cause coming on to be heard at this term, upon an application for an interlocutory order suspending the order of the Interstate Commerce Commission hereinafter mentioned, and restraining its enforcement, was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the order made by the defendant, the Interstate Commerce Commission heretofore to wit on the 24th day of June, 1908, in words and figures as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission having, on the date hereof, made and filed a report containing its conclusions hereon:

'It is ordered that the defendants, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company, be and they sever-

ally are hereby notified and required to cease and desist on or before the 25th day of August, 1908, from charging, demanding, collecting or receiving for the transportation of property between the Mississippi River crossings, East St. Louis to East Dubuque, Ill., inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic Seaboard points, or at other points of origin, as specified on pages 3 and 4 of Western Trunk Line Tariff, No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, their separately established class rates now in effect between said Mississippi River crossings and said Missouri River cities, which are in cents per hundred pounds as follows:

Classes	1	2	3	4	5
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Rates	60	45	35	27	22

And to also cease and desist, on or before said 25th day of August, 1908, from charging, demanding, or receiving the above named rates for the transportation of property between the Mississippi River Crossing, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, when moving under class rates and when from above described points of origin and destined to Sioux City, Iowa.

'It is further ordered that said defendants, The Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Northwestern Railway Company and the Chicago Great Western Railway Company, be, and they severally are hereby notified and required to establish and put in force, on or before the said 25th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of property between Mississippi River Crossings, East St. Louis to East Dubuque, Ill., inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr.,

142 and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, taking New York as representative, or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, class rates in cents per 100 pounds not in excess of the following scale, to wit:

Classes	1	2	3	4	5
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Rates	51	38	30	23	19

'It is further ordered, that the rates herein established shall be applied to the transportation of property moving under class rates between Mississippi River crossings, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, and points taking the same rates, as parts of the through class rates, on through shipments originating at Atlantic seaboard points, or at other points of origin as specified on pages 3 and 4 of said Western Trunk Line Tariff No. 786, I. C. C. 678, or at points taking the same rates, when destined to Sioux City, Iowa, or to points taking the same rates.

'It is further ordered that said defendants be, and they are severally authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the said 25th day of August, 1908. The tariffs in which the rates are given must contain the notation that they are issued under the authority hereby granted, and must refer to the title and number of this case.

'It is further ordered, that as to all the other defendants, herein, the complaint in this proceeding be, and it is hereby dismissed,'"
 143 and any subsequent order or orders extending the time for putting the foregoing order into effect, and each and all thereof be and the same hereby are stayed until the rightful-

ness of the discrimination in rates between localities averred by the bill and seemingly contemplated by the order can be ascertained from testimony (taken on reference to a master or otherwise, as may be provided) and the further order of the Court thereupon.

144 And on the same day to-wit: the sixth day of November, 1908, being one of the days of the regular July Term of said Court, 1908, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, Hon. Francis E. Baker and Hon. William H. Seaman, Circuit Judges, appears the following entry towit:

145 *Order of November 6, 1908—Leave Given Illinois Central Railroad Company et al. to File Intervening Petitions.*

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, CHICAGO Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Northwestern Railway Company, Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company,

vs.

INTERSTATE COMMERCE COMMISSION.

The above entitled cause coming regularly on to be heard upon the application of the Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri Kansas and Texas Railway Company, and The St. Louis and San Francisco Railroad Company for leave to file their petition of intervention herein, and the Court having heard the argument of counsel for the respective parties, the same was submitted to the Court.

And thereupon, upon consideration thereof, it is ordered that said application be, and the same hereby is sustained and that leave be and the same hereby is granted to said parties to file their said petition of intervention herein.

146 And on the same day to-wit: on the sixth day of November, 1908, there was filed in the Clerk's office of said court a certain Intervening Petition on behalf of the Illinois Central Railroad Company and others, in words and figures following to-wit:

147 *Intervening Petition on Behalf of the Illinois Central Railroad Company et al.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation,

VS.

THE INTERSTATE COMMERCE COMMISSION.

Intervening Petition on behalf of the Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago & Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, and The St. Louis and San Francisco Railroad Company, to be made co-complainants.

Your petitioners, the Illinois Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under and
148 by virtue of the laws of the State of Kansas, The Chicago & Alton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, The Missouri Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, The Missouri, Kansas & Texas Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, and The St. Louis & San Francisco Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, humbly show unto your Honors that the principal operating office of your petitioner, the Illinois Central Railroad Company, is in the City of Chicago, State and District aforesaid; that your petitioners are common carriers, engaged in the transporting of property by railroad by continuous carriage or shipment from points in the State of Illinois, particularly the cities of Chicago and East St. Louis, to points in the States of Texas, Oklahoma, Kansas, Nebraska, Colorado, New Mexico, Arizona and California; that the lines of railroad of your petitioners connect either or both of the cities of Chicago and St. Louis with one or more of the

cities of Kansas City and St. Joseph, Missouri; Omaha, Nebraska, and Sioux City, Iowa, the said last named cities being hereinafter referred to as the "Missouri River cities," and that your petitioners have been so engaged in the transportation of property by railroad for many years last past.

Your petitioners further show to the court that the City of St. Louis, in the State of Missouri, is located upon the Mississippi

149 River; that various railroad companies own and operate lines of railroad extending from cities upon the Atlantic Coast in the United States, to the said City of St. Louis; that various railroad companies own and operate lines of railroad extending from said City of St. Louis westward, southwestward, and northwestward from said city and extending from the said City of St. Louis to the said Missouri River cities, and extending beyond the said Missouri River cities to points west, northwest and southwest thereof.

Your petitioners further show that none of the lines of the said rail railroad companies which reach from the Atlantic seaboard to the City of St. Louis or the City of Chicago, extend west of the Mississippi River or west of the City of Chicago; that none of the lines of railroad which operate west of the City of St. Louis and west of the Mississippi River extends east of the City of St. Louis or the City of Chicago to the Atlantic seaboard.

Your petitioners further show that there have been adopted and are now in force two classifications of freight upon which classifications the tariff rates for the transportation of merchandise are based; that one of said classifications, known as the Official Classification, is effective from the Atlantic Coast to the City of St. Louis, by reason of the fact, as above set forth, that lines of railroad extend and are operated from the said Atlantic Coast to the said City of St. Louis; that west of the City of St. Louis, and between said city of St. Louis and the said Missouri River cities, there is in force and effect a classification of freight known as the Western Classification; that the said Western Classification and Eastern Classification differ in many respects, and differ in that certain kinds of merchandise are in one classification placed in one class, while in the other
150 classification the same kinds of merchandise are placed in another class; and the rates charged for transportation in the tariffs of your orators are based upon the classes as arranged in said classifications.

Your petitioners further show that various railroad companies have lines of railroad extending from the Atlantic seaboard westward to the City of Chicago, many of which companies do not have lines reaching to the City of St. Louis, and that the lines of railroads of your petitioners extend as aforesaid from the City of Chicago westward to the said Mississippi River, and westward, between the said Mississippi River and the Missouri River and to points west of the said Missouri River.

Your petitioners further show that by reason of the fact that the said Official Classification is in force and applies to all transportation of merchandise to the Mississippi River at St. Louis from all Eastern points, the companies whose rails extend from the Atlantic seaboard to the City of Chicago aforesaid and your petitioners, are compelled,

in order to equalize the rates for the transportation of merchandise from points on the Atlantic seaboard to the Missouri River cities herein mentioned, to apply the Official Classification and the St. Louis rates as far as the Mississippi River, to the transportation of all such merchandise transported from the Atlantic seaboard.

Your petitioners further show that the tracks of the said Illinois Central Railroad Company cross the Mississippi River at Dubuque; that tracks of the Atchison, Topeka & Santa Fe Railway Company cross the Mississippi River at Fort Madison; the tracks of the 151 Chicago & Alton Railroad Company cross the Mississippi River at Alton; the tracks of the Missouri Pacific Railway Company do not extend east of the Mississippi River, but begin at St. Louis and extend westward to various of said Missouri River cities; and the tracks of the Missouri, Kansas & Texas Railway Company do not extend east of the Mississippi River, but begin at the City of St. Louis and extend westward to the Missouri River.

Your petitioners further show that upon all transportation of merchandise between the City of St. Louis or any of the other said Mississippi River points, the said Western Classification applies, and the rates of your petitioners for the transportation of merchandise between said points are fixed with reference to said Western Classification.

Your petitioners further show that they have adopted and have filed, published and posted, in all respects in accordance with law, tariffs showing their charges for the transportation of merchandise between all of the said points on the Mississippi River and the said Missouri River points, which said charges are as follows, in cents per one hundred pounds, for the five classes of merchandise as fixed by said Western Classifications, as follows:

1	2	3	4	5
<u>60</u>	<u>45</u>	<u>35</u>	<u>27</u>	<u>22</u>

Your petitioners further show that the said rates and charges for the transportation of merchandise between the points on the Mississippi River aforesaid and the said Missouri River points were not established by your petitioners as a part of Joint Through Rates, and were not established by your petitioners to be specially 152 applied to through transportation of merchandise from points on the Atlantic seaboard to said Missouri River points, but on the contrary, your petitioners show that the said rates were established by them for the transportation of merchandise carried by them between said points, regardless of the point of origin of such shipments. Your petitioners further show that the said rates so established by them are the same as, and are identical in all respects with the rates applying on similar transportation between the same points referred to and described in the original bill of complaint herein as the existing rates of the complainants therein.

Your petitioners further show that the said rates so established are just and reasonable, and the same yield to your petitioners only a fair and proper return for the service involved in said transportation.

Your petitioners further show that all merchandise delivered to your petitioners at the Mississippi River crossings or in the City of Chicago for transportation between the said Mississippi River crossings and said Missouri River cities is delivered to your petitioners either by team at the freight depots of your petitioners or by the earload at various industries upon the sidetracks of your petitioners; that all merchandise delivered to your petitioners for transportation between said Mississippi River crossings and said Missouri River cities which is in the course of through shipments from the Atlantic seaboard is delivered to your petitioners by team to the freight depots of your petitioners or by car, switched to the freight depots of your petitioners, from Eastern lines. Your petitioners show that in all

153 cases the expense to your petitioners of handling merchandise delivered to them at the Mississippi River points or at the City of Chicago to be transported between said Mississippi River crossings and said Missouri River cities is not more than and in many instances less than the expense to your petitioners of handling an equal amount of like merchandise delivered to your petitioners by Eastern lines, to be transported between said Mississippi River crossings and said Missouri River cities. And your petitioners show that the total cost to your petitioners of handling and transporting merchandise between said Mississippi River crossings and said Missouri River cities is not more, and in many instances much less, in the case of merchandise delivered to your petitioners at said Mississippi River points or the City of Chicago than it is in the case of an equal amount of like merchandise delivered to your petitioners by Eastern lines in the course of transportation from the Atlantic seaboard to said Missouri River cities.

Your petitioners further show that on or about the 11th day of February, A. D. 1907, a complaint was filed in the office of said Interstate Commerce Commission, D. C., by the Burnham, Hanna Munger Dry Goods Company, a corporation, and others, as complainants, a copy of which complaint is attached to the original bill herein and marked "Exhibit A"; that the said complaint named as defendants the following railroad companies, complainants in the above entitled cause: The Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & North-

154 western Railway Company; and Chicago Great Western Railway Company; that thereafter in due time answers were filed by said defendants to said complaint and various Eastern railroads were made parties defendant to said proceeding; but that said Eastern railroads, although appearing at the hearing had on said complaint introduced no evidence as such defendants and were dismissed out of said proceeding by order of said Commission hereinafter set forth. After the filing of the answers above referred to, hearings were had upon said complaint, and thereupon the said Commission rendered its opinion and entered its final order in the premises on June 24, 1908.

Your petitioners further show that thereafter, by orders duly entered by said Interstate Commerce Commission, the time for the

compliance by complainants herein, defendants before the said Interstate Commerce Commission, with the above mentioned order of June 24, 1908, was duly and regularly extended until the 26th day of October, A. D. 1908.

Your petitioners further show unto your Honors that the said order so entered by the said defendant, the Interstate Commerce Commission, on June 24, 1908, was in words and figures as follows, to wit:

"This cause being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the day hereof, made and filed a report containing its conclusions thereon;

"It is ordered, That the defendants, the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company, be and they severally

155 are hereby notified and required to cease and desist on or before the 25th day of August, 1908, from charging, demanding, collecting or receiving for the transportation of property between the Mississippi River crossings, East St. Louis to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard point or at other points of origin, as specified on pages 3 and 4 of Western Trunk Line Tariff, No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to the said Missouri River cities, or to points taking the same rates, their separately established class rates now in effect between said Mississippi River crossings and said Missouri River cities, which are in cents per one hundred pounds as follows:

Classes	1	2	3	4	5
Rates	60	45	35	27	22

And to also cease and desist, on or before said 25th day of August, 1908, from charging, demanding or receiving the above named rates for the transportation of property between the Mississippi River crossing, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, when moving under class rates and when from above described above points of origin and destined to Sioux City, Iowa.

"It is further ordered, That said defendants, the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company and the Chicago Great Western Railway Company, be, and they severally are, hereby notified and required to establish and put in force, on or before the said 25th day of August, 1908, and maintain in force thereafter during a period of not less

than two years, and apply to the transportation of property between Mississippi River crossings, East St. Louis to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rate, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, taking New York as representative, or at other points of origin, as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or, at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, class rates, in cents per one hundred pounds not in excess of the following scale, to wit:

Classes	1	2	3	4	5
Rates	<u>51</u>	<u>38</u>	<u>30</u>	<u>23</u>	<u>19</u>

It is further ordered, That the rates herein established shall be applied to the transportation of property moving under class rates between Mississippi River crossings, East Burlington to East Dubuque, Illinois, inclusive, and Sioux City, Iowa, and points taking the same rates, as parts of the through class rates, on through shipments originating at Atlantic seaboard points, or at other points of origin as specified on pages 3 and 4 of said Western Trunk Line Tariff No. 786, I. C. C., No. 678, or at points taking the same rates, when destined to Sioux City, Iowa, or to points taking the same rates.

It is further ordered, That said defendants be and they are severally hereby authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the said 25th day of August, 1908. The tariffs in which the rates are given must contain the notation that they are issued under the authority hereby granted, and must refer to the title and number of this case.

157 And it is further ordered, That as to all the other defendants herein, the complaint in this proceeding be and it is hereby dismissed."

Your petitioners further show unto your Honors that the reduction in the rates now charged and received by your petitioners compelled and enforced by said order as hereinafter set forth, will reduce the revenues of your petitioners more than five hundred thousand dollars annually.

Your petitioners further show that if the said order goes into force and effect, the application of the principle therein contained will necessarily result in the further lowering of other rates now duly received by your petitioners to a very much greater extent; that the amount of such resultant reduction effected by the application of the general principle of said order, your petitioners are unable to exactly estimate; but your petitioners allege and so state the fact to be that the actual loss of revenue compelled by said order above set forth, together with the loss of revenue arising by reason of the

application of the general principle of said order to other rates and charges now duly existing, not in terms specified in said order, will reduce the revenues of your petitioners millions of dollars annually.

Your petitioners further aver, and so allege the fact to be, that said order of June 24, 1908, above set forth, so entered by said Interstate Commerce Commission is unreasonable, unjust, oppressive and unlawful, in excess of the powers conferred on said defendant by said Act to Regulate Commerce, and in violation of the Constitution of the United States and more particularly in violation of the Fifth Amendment thereof, in that, among other things, the said order prevents your petitioners from charging, as hereinafter set forth, their reasonable and just rates and charges for the services so rendered as aforesaid by your petitioners, that said order takes the property of your petitioners without due process of law, and that the said order compels your petitioners to accept for the transportation of property as aforesaid, rates and charges which are not reasonable and fair returns for the services so rendered by your petitioners.

Your petitioners further show unto your Honors that the complaint before said Interstate Commerce Commission as a result of which said order was made was brought on the theory that the rates to the said Missouri River cities were too high in comparison with the rates, to said Twin Cities, and thereby produced undue discrimination against said Missouri River cities, in favor of said Twin Cities; that the only evidence offered by said complainants before said Commission were comparisons of the proportions received by the complainants herein of the through rates to said Missouri River cities as against proportions received by complainants herein of through rates from the Atlantic seaboard to said Twin Cities, proportions received by complainants herein of through rates in trans-continental traffic, and proportions received by them of through rates from the Atlantic seaboard to Southwestern points, such as El Paso, Texas. That complainants herein, defendants on said hearing, offered evidence tending to show that all the rates in comparison with which the rates to said Missouri River cities were claimed to be unreasonably high, were fixed by the effect of water or rail competition, which competition did not and could not affect the rates to said Missouri River cities. Your petitioners further show unto your Honors that said cause before said Commission was tried upon the issues so raised.

Your petitioners further show that the rates above named of necessity are as aforesaid the same between each of the said Mississippi River crossings and each of the said Missouri River cities; that the rate between St. Louis upon the Mississippi River and Kansas City, upon the Missouri River, being the rate above mentioned, is the rate which has been fixed and established by the Railroad Commission of the State of Missouri for said service; that said rate for transportation between said point on the Mississippi River and said point on the Missouri River was fixed by said Railroad Commission of the State of Missouri in a due proceeding had for that purpose.

Your petitioners further show unto your Honors that the said

order compels the Railroad Companies affected, including your petitioners, to lower their rates between the Mississippi River crossings and the said Missouri River cities on the theory that the same are parts of through class rates on through shipments to said Missouri River cities from the Atlantic seaboard; that the said order refers only to through shipments, that the service of performing such through carriage is made up of two factors, the carriage by the Eastern lines and the carriage by the Western Railroad Companies, including your petitioners, from their terminals to the point of destination; that said order reduces the so-called through rates as now made up and compels new through rates in place thereof by reducing alone the proportions of such through rates to be received by such Railroad Companies; that said order in no wise affects or changes the proportions of said through rates to be received by said Eastern

160 carriers. Your petitioners allege and so state the fact to be, that there was no allegation in said complaint, that said proportion of the present so-called through rate so received by said Eastern carriers was reasonable and just, and that there was no evidence introduced at the hearing aforesaid before said Commission tending to show that said proportions were reasonable, just and proper, and your petitioners allege that said order is in such respects unreasonable, unjust, unlawful and discriminatory against all the railroad companies affected, including your petitioners, and will operate as a taking of their property without due process of law.

Your petitioners further show unto your Honors that under and by virtue of said Act to Regulate Commerce as amended the said Interstate Commerce Commission may establish through routes and joint rates after hearing on a complaint, and may also make a supplemental order on said complaint, prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, only when the carriers participating in such through haul fail to agree among themselves upon the apportionment and division of such joint rate. Your petitioners show unto your Honors that the rates sought to be established by said order are in effect through joint rates, the charge to be divided among two or more carriers, each participating in the through haul. Your petitioners allege that on said hearing there was no showing or statement made that the carriers participating in the traffic from the Atlantic seaboard to the

Missouri River cities would be or were unable to agree among
161 themselves on the respective proportions of the rate so established by said order. And your petitioners further show that said order is in no sense a supplemental order, but was the final and only order entered in said hearing. Your petitioners further show that by said order said Commission in effect established a joint through rate, and that said Commission did not leave to the carriers who were to participate in such joint through rate the determination of the proportions of such joint through rate to be received by each; but said Commission without investigation or hearing on said question of division of such joint through rate, fixed the proportion to be received by the carriers, so to participate in said rate. And your petitioners show unto your Honors that in such respects said

Commission exceeded the powers conferred upon it by said Act to Regulate Commerce as amended, and is about to deprive all the railroad companies affected, including your petitioners, of their property without due process of law, in violation of the Constitution of the United States and the Fifth Amendment thereof.

Your petitioners further show unto your Honors that the rates now charged by the complainants herein and your petitioners for the transportation of merchandise from said Mississippi River crossings to said Missouri River cities specified in the first paragraph of said order are just and reasonable rates in and of themselves. Your petitioners allege, and so charge the fact to be, that at the hearing aforesaid before said Commission no evidence was offered, heard or introduced, tending to show that said rates were unreasonable, unjust or unlawful in and of themselves, save by comparisons with

162 other existing rates more specifically hereinbefore referred to; that no evidence was offered by the complainants at said hearing or heard at said hearing as to the cost of the actual service for which said rates were charged, the value of such service, or as to any of the various elements which are proper to be considered in determining whether or not a given rate is reasonable in and of itself. And your petitioners show unto your Honors that in such respects the order aforesaid of said Commission is unjust, unlawful, unreasonable, in excess of the authority conferred on said Commission by said Act to Regulate Commerce, as amended, and in violation of the Constitution of the United States and the Fifth Amendment thereof.

Your petitioners further aver that the said order reducing the said rates of complainants herein for the transportation of merchandise between said Mississippi River crossings and the said Missouri River cities was not based upon any finding or conclusion of the said Interstate Commerce Commission that the said rates were unjust or unreasonable in themselves for the service involved in said transportation. Your petitioners show that the said Interstate Commerce Commission made no finding or conclusion that the said rates were unreasonable or excessive for the said service of transporting merchandise between said Mississippi River crossings and said Missouri River cities. In this respect your petitioners aver that the said Interstate Commerce Commission in its conclusions in said proceeding, held that the said rates should not be lowered for the transportation of merchandise between the said Mississippi River crossings and said Missouri River cities when the said merchandise so transported

163 was not in course of shipment from the Atlantic seaboard. And your petitioners show that the sole and only reason and the sole and only conclusion of the said Interstate Commerce Commission upon which the said reduction was ordered as aforesaid, was because the said Interstate Commerce Commission, decided that merchandise shipped from the Atlantic seaboard should be shipped by your petitioners from the Mississippi River crossings to the Missouri River cities at a lower price and charge than that exacted by complainants herein for the transportation of an equal amount of like merchandise when the same was shipped from St. Louis or Chicago, or other points west of the Atlantic seaboard. In support of

this averment your petitioners refer to the report and opinion of said defendant, the Interstate Commerce Commission, annexed as Exhibit B to the original bill of complaint herein, and your petitioners pray that the same may be taken as a part hereof. And your petitioners aver that, inasmuch as the lines of complainants herein do not reach the Atlantic seaboard, and inasmuch as the transportation over their lines begins at the Mississippi River or the City of Chicago, and inasmuch as the expense to them of the transportation of like merchandise is greater in the case of merchandise shipped from the Atlantic seaboard than in the case of merchandise delivered to your petitioners for shipment at Chicago or St. Louis, the said Interstate Commerce Commission exceeded its authority in ordering that your petitioners transport merchandise shipped from the Atlantic seaboard at a less rate between the Mississippi River crossings and the Missouri River cities aforesaid than that charged to shippers at Chicago or St. Louis for transportation, which involves less expense to the complainants herein. And your petitioners aver that the

164 said order of the said Interstate Commerce Commission misapplies the law and compels the railroad companies affected, including your petitioners, to serve a certain class of persons, to wit, the shippers on the Atlantic seaboard, at an unreasonably low rate, as hereinabove set forth, and at a rate lower than is charged shippers at Chicago and St. Louis for a like service, which, as to the service furnished said last named shippers, involves for such railroad companies less actual cost.

Your petitioners aver that said defendant did not consider in any manner whatsoever, (as shown by said opinion Exhibit B to the original bill of complaint herein), the question of the relative cost involved to the railways performing the service of transporting goods to the Missouri River cities where the shipment begins at the eastern terminals of the complainants herein, as contrasted with the service performed when the shipment originates on the Atlantic seaboard. And your petitioners aver and so state the fact to be that no evidence as to this relative cost of service was introduced before said Commission by any of the parties to said hearing.

Your petitioners aver that after the said order was issued by said Interstate Commerce Commission, they made formal application to said Interstate Commerce Commission for leave to intervene in said cause and to be made defendants therein, and for an opportunity to be heard, and to introduce evidence, and prove the facts hereinabove averred, and to prove that the said order of the said Commission was in excess of its authority, and in violation of law. A copy of the said petition, so presented to said Interstate Commerce Commission by said railroad companies is hereto attached and

165 marked "Exhibit A" and made a part hereof. But your petitioners aver that, notwithstanding the facts aforesaid, the said Interstate Commerce Commission refused to allow the said petition of intervention to be filed, and refused to allow your petitioners to intervene and introduce any testimony in said proceeding.

Your petitioners further aver that if the said order of the said In-

terstate Commerce Commission is allowed to become effective, the said large reduction in the revenues of your petitioners will be compelled, and your petitioners will lose annually more than the said sum of \$500,000, which said loss will be absolute and irrevocable. And your petitioners further aver that if the said order shall be allowed to become and be effective, it will necessarily result (as hereinafter set forth) in the lowering of the rates to be charged by your petitioners for the transportation of merchandise between said Mississippi River crossings and said Missouri River cities upon all merchandise originating at the Atlantic seaboard, and if the said rates are so lowered it will be extremely difficult for your petitioners, even if the said order should be finally set aside by the decree of this court herein, to restore the present rates, and as a consequence thereof the enforcement of said order would result in a great disturbance of the business of your petitioners, and of each of them, and in a consequent irreparable loss to your petitioners and each of them.

And your petitioners hereby adopt in this behalf, and pray that they may be so taken by this honorable court, all the allegations of the original bill of complaint herein.

Your petitioners further show that if the said order of the
166 said Interstate Commerce Commission is enforced and becomes operative as against the railroads directly parties to said proceeding, the complainants herein, and if the rates prescribed by the said order should be by said last mentioned railroad companies put into effect, your petitioners would be compelled by said action of said companies to reduce their rates for like transportation in equal degree or to lose all the business of said transportation, and that thereby the loss to your petitioners by reason of the enforcement of the said order would be as absolute and irrevocable as it would be if your petitioners had been made actual parties to said proceeding.

Your petitioners further show that they are desirous of being made parties to the above entitled cause, and to appear and to assist at the hearing hereof as co-complainants and to offer such competent evidence as may seem to them proper in support of the averments contained herein, and in the said bill of complaint in said cause; and these petitioners hereby offer, upon being allowed to come in as such co-complainants, to contribute their share of the costs of said proceeding; and your petitioners desire to appear as co-complainants and join in any application to this honorable court for a preliminary or interlocutory order or decree that may be made in accordance with the prayer of the original bill of complaint in the above entitled cause.

Wherefore your petitioners pray that by an order of this court your petitioners may be allowed to come in and be made parties complainant in said above entitled cause with the original complainants, upon payment of their share of the expenses of said suit, and by
the terms of said order your petitioners be permitted to join
167 in any application for a preliminary or interlocutory order or decree restraining the said order of the Interstate Commerce Commission and enjoining its enforcement. And your petitioners

further pray as the original complainants have duly and fully prayed in the original bill of complaint herein.

And your petitioners further pray for such other and further relief in the premises as justice and equity may require and to your Honors shall seem meet.

And your petitioners will ever pray, etc.

ILLINOIS CENTRAL RAILROAD COMPANY,
THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY,
THE CHICAGO & ALTON RAILROAD
COMPANY,
THE MISSOURI PACIFIC RAILWAY
COMPANY,
MISSOURI, KANSAS & TEXAS RAIL-
WAY COMPANY,
ST. LOUIS & SAN FRANCISCO RAIL-
ROAD COMPANY,

By WILLIAM D. McHUGH AND
COLIN C. H. FYFFE,

Solicitors for Said Intervening Petitioners.

WILLIAM D. McHUGH,
COLIN C. H. FYFFE,
Of Counsel.

168 STATE OF ILLINOIS,
County of Cook, ss:

E. B. Boyd, being first duly sworn, on oath deposes and says that he is the assistant to the vice-president of the Missouri Pacific Railway Company, one of the complainants herein; that he has read the said petition for intervention and knows the contents thereof, and that the allegations thereof are true.

E. B. BOYD.

Subscribed and sworn to before me, a Notary Public in and for the County of Cook and State of Illinois, this 22nd day of October, A. D., 1908.

CORNELIUS LYNDE,
Notary Public.

[NOTARIAL SEAL.]

169

EXHIBIT A.

Before the Interstate Commerce Commission.

Docket No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Com-
plainants,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.,
Defendants.

Intervening Petition in the Nature of a Petition for Rehearing of the above entitled Cause by the Illinois Central Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago & Alton Railroad Company, the Missouri Pacific Railway Company, the Missouri, Kansas & Texas Railway Company, and the St. Louis & San Francisco Railroad Company.

Your petitioners, The Illinois Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; The Chicago & Alton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; The Missouri Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri; The Missouri, Kansas & Texas Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, and The St. Louis & San Francisco Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of

170 Missouri, represent that they are common carriers engaged in the transportation of property by railroad by continuous carriage or shipment from Chicago via the Mississippi River crossings and from St. Louis to points in the west and southwest portions of the country through the Cities of Omaha, Kansas City, St. Joseph and Sioux City; that each of the petitioners herein connect one or both of the first mentioned cities with one or more of said last four mentioned cities.

Petitioners further represent that all of said above named railroads are parties to the Western Trunk Line Committee Joint Through Freight Tariff, W. T. L. No. 215, I. C. C. No. 471, and amendments thereof, naming local rates per hundred pounds from Mississippi River points and Chicago to Kansas City, St. Joseph, Omaha and Sioux City. Petitioners further represent that none of the above mentioned railroads has lines of railroad running to the Cities of Minneapolis and St. Paul.

Petitioners represent that on or about the 11th day of February, 1907, a complaint was filed in the office of the Commission at Washington, District of Columbia, by the Burnham, Hanna, Munger

Dry Goods Company, a corporation, and others, as complainants, against the following named railroads as defendants: The Chicago, Rock Island & Pacific Railway, The Chicago, Burlington & Quincy Railway Company, The Chicago, Milwaukee & St. Paul Railway, The Chicago & Northwestern Railway, The Chicago Great Western Railway, the said complaint bearing number 983 on the docket of the Commission. Said complaint alleges in substance that the complainants are numerous corporations, firms and individuals having their principal places of business in the Cities of Kansas City, St. Joseph and Omaha, and are engaged in the mercantile or manufacturing business and in buying and selling various commodities

shipped from the Atlantic seaboard to the several cities where
171 their respective places of business are located; that the defendants are common carriers engaged in transporting property from the Atlantic seaboard to said Kansas City, St. Joseph and Omaha, and to the Cities of Minneapolis and St. Paul, and that as such, defendants are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto; that the defendant railroads are parties to the Western Trunk Line Committee Through Freight Tariff W. T. L. No. 786, I. C. C. No. 678, naming through rates from the Atlantic seaboard to St. Paul and Minneapolis, said complaint setting out said through rates in full; that the defendant carriers are all parties to the Western Trunk Line Committee, Joint Through Freight Tariff W. T. L. No. 215, I. C. C. No. 471, naming local rates per hundred pounds from Mississippi River points and Chicago to said Kansas City, St. Joseph and Omaha, said complaint setting out said rates in full. The complaint shows the distances from New York to St. Paul and Minneapolis and from New York to Omaha, St. Joseph and Kansas City and alleges that such distances are substantially the same. The complaint thereupon reads as follows:

"These complainants further show that the rates charged and classification enforced by the defendant carriers as hereinbefore set forth for the transportation of property from the Atlantic seaboard and other eastern producing territory to Kansas City, St. Joseph and Omaha, are in themselves unreasonable and relatively unjust, unfair and prejudicial as compared with rates from the same territory to St. Paul and Minneapolis; that the volume of traffic, territory traversed, cost of operation and maintenance, railroad property values and services that are involved in the handling of traffic from the Atlantic seaboard to Missouri River points and to Minneapolis and St. Paul are substantially the same; that complainants are subjected to undue discrimination, prejudice and disadvantage
172 and that said rates to Kansas City, St. Joseph and Omaha are therefore in violation of the act to regulate commerce with amendments and supplements thereto."

The complaint then further sets forth that large portions of the territory served by complainants are also served by similar concerns conducting similar businesses from St. Paul and Minneapolis who, at said cities receive their shipments from the initial eastern points; and that the defendants are now engaged in transporting freight

from the Atlantic seaboard westward through the Cities of Kansas City, St. Joseph and Omaha to said above mentioned territory at per ton mile rates that are less than the per ton mile rates charged complainants, and alleges therein discrimination against complainants. The complaint thereupon suggests as reasonable and just rates which will pay for all operating expenses, maintenance and a fair profit on the fair value of property owned by the defendant railroads employed in transporting freight from the Atlantic seaboard to the Cities of Omaha, St. Joseph and Kansas City, to wit: per hundred pounds first class, \$1.10; second class, \$.95¼; third class \$.72½; fourth class, \$.51¼; fifth class \$.44; subject to the "official classification" and alleges that the through rates at present charged from the Atlantic seaboard to said three cities are unjust, unreasonable, excessive and discriminatory against and prejudicial to complainants, and each of them, and that the sums charged, accepted and retained by the defendant companies respectively on said through rates from the Atlantic seaboard via Mississippi River crossings and via Chicago for said five classes respectively are excessive, unjust, unreasonable in and of themselves because said sums and rates are higher and greater than reasonably necessary and unjust, discriminatory, and prejudicial to the complainants.

The complaint prays that defendants be required to answer the charges therein and that an order be entered commanding
173 them to desist from charging the rates specified therein as the present rates and forbidding the defendants, and each of them, from charging and retaining as their proportion of said through rates on business via Chicago and Mississippi River crossing to said Kansas City, St. Joseph and Omaha the present specified proportions of said through rates per hundred pounds for said five classes of said freight matter respectively, and that defendants be ordered to publish within a reasonable time *through* rates from the Atlantic seaboard to Kansas City, St. Joseph and Omaha not to exceed the amounts suggested in the complaint with proportionate reductions from the East at various points or such other rates as the Commission shall deem proper.

Thereupon such proceedings were had that the various named defendants in said complaint filed answers and at the suggestion contained in the answer of The Chicago & Northwestern Railway Company, one of the said defendants, that the through rates made the subject of complaint in the proceeding had been established and put in force and were maintained by virtue of joint traffic agreements between the defendants and various eastern railroads, the various eastern railroads specified in said answer were made additional parties defendant to said proceeding; that the Sioux City Commercial Club intervened and supported the complainant's request on the ground that said Sioux City was also a Missouri River crossing and should be placed upon a parity with Omaha, Kansas City and St. Joseph. The St. Paul Jobbers and Manufacturers' Association of St. Paul and the Commercial Club of Minneapolis and the Chicago Association of Commerce and the Merchants' Traffic Bureau and the Business Men's League of St. Louis appeared at the hearings on behalf of the com-

mercantile interests of their respective cities in defense of the established rates and the established system of rate construction; that
 174 hearings were had upon said complaint and answers and testimony and evidence was had and considered and arguments of counsel and that on February 24, 1908, the cause was submitted to the Commission. Thereupon, after due consideration, the Commission rendered its opinion and entered its final order in the premises on June 24, 1908, which said order was in words and figures as follows, to wit:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company and the Chicago Great Western Railway Company, be and they severally are hereby notified and required to cease and desist on or before the 25th day of August, 1908, from charging, demanding, collecting or receiving for the transportation of property between the Mississippi River crossings, East St. Louis to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to the said Missouri River cities, or to points taking the same rates, their separately established class rates now in effect between said Mississippi River crossings and said Missouri River cities, which are in cents per 100 pounds as follows:

Classes	1	2	3	4	5
Rates	60	45	35	27	22

And to also cease and desist, on or before said 25th day of August, 1908, from charging demanding or receiving the above-named rates for the transportation of property between the Mississippi River crossing, East Burlington to East Dubuque, Illinois, inclusive,
 175 and Sioux City, Iowa, when moving under class rates and when from above described points of origin and destined to Sioux City, Iowa.

It is further ordered, That said defendants, the Chicago, Rock Island & Pacific Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company, be, and they severally are hereby, notified and required to establish and put in force, on or before the said 25th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to

the transportation of property between Mississippi River crossings, East St. Louis to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, taking New York as representative, or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, class rates in cents per 100 pounds not in excess of the following scale, to wit:

Classes	1	2	3	4	5
Rates	51	38	30	23	19

It is further ordered, That the rates herein established shall be applied to the transportation of property moving under class rates between Mississippi River crossings, East Burlington to East Dubuque Illinois, inclusive, and Sioux City, Iowa, and points taking the same rates, as parts of the through class rates, on through shipments originating at Atlantic seaboard points or at other points of origin as specified on pages 3 and 4 of said Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates when destined to Sioux City, Iowa, or to points taking the same rates.

It is further ordered, That said defendants be, and they are severally hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the said 25th day of August, 1908. The tariffs in which the rates are given must contain the notation that they are issued under the authority hereby granted, and must refer to the title and number of this case.

And it is further ordered, That as to all the other defendants herein, the complaint in this proceeding be, and it is hereby, dismissed."

The Chicago & Alton Railroad Company, petitioner herein, connects by its lines of railroad both Chicago with St. Louis and the latter city with Kansas City. The Illinois Central Railroad Company, petitioner herein connecting St. Louis with New Orleans and Chicago, has a direct line via Dubuque from Chicago to Omaha and Sioux City. The Atchison, Topeka & Santa Fe Railway Company, petitioner herein, has direct lines of railroad from Chicago to Kansas City and St. Joseph, and from the latter two points to Galveston and El Paso. The Missouri Pacific Railway Company, petitioner herein, has lines of railroad from St. Louis through Kansas City, Omaha and St. Joseph to Denver, Galveston and El Paso. The Missouri, Kansas & Texas Railway Company, petitioner herein, connects by its lines of railway St. Louis and Kansas City, and these cities with Oklahoma City and Galveston. The St. Louis & San Francisco Railroad Company connects St. Louis with Oklahoma City and Ft. Worth and with Kansas City and connects Kansas City via Memphis with Birmingham, Alabama.

These petitioners all participate in the traffic from the Atlantic seaboard territory via Chicago and Mississippi crossings to the Missouri River points, to wit: the four cities of Kansas City, Omaha, St. Joseph and Sioux City referred to in said order of the Commission above set forth, such traffic consisting not only of freight consigned to the said four cities, but to many other points, the freight rates to which are based upon the freight rate between the Mississippi crossings and the said four cities. The rates charged by your petitioners for said service on such through traffic between the two rivers are the rates specified in the first portion of the order of the Commission of June 24, 1908, above set forth.

These petitioners aver and so state the fact to be that they were not made parties to the above described complaint and were not given any notice thereof. And as the theory of said complaint rests upon an alleged discrimination against the complainants by reason of the proportions from Chicago of through rates charged by the defendant carriers, on shipments from the Atlantic seaboard via Chicago to St. Paul and Minneapolis, as against the proportion charged from the Mississippi River crossings to Missouri River points on through shipments from the seaboard, the petitioners herein were not proper parties to said complaint and were not so made parties defendant as above stated. These petitioners were not proper parties defendant to said original complaint and were not made parties defendant thereto for the reason that the allegations in the complaint were directed and were intended to be directed against the alleged unjust discriminations in favor of St. Paul and Minneapolis as against the complainants and the said Missouri River cities. In taking the evidence at the hearing of said cause the evidence was, in accordance with said petition, mainly directed at such alleged unjust discriminations in favor of St. Paul and Minneapolis and against said complainants and said Missouri River cities. These petitioners say that there was no allegation in said complaint which, if it had been brought to the attention of these petitioners, would have put them on notice of any interest of theirs in said cause or that the case related to any other rates than those between Chicago and the Twin Cities. These petitioners say that they did not receive information and they did not learn the nature of the order entered in said cause and its bearing upon their interests and upon the rates made by them between Mississippi and Missouri River points until long after the entry of said order of June 24, 1908, and that immediately upon ascertaining the character of said order they caused this petition to be prepared, showing that their rights would be injuriously affected in case said order should not be modified or rescinded.

Petitioners are informed and believe and so state the fact to be that at the hearing on said complaint above referred to the only evidence as to unreasonableness in said rates so ordered to be reduced by said order was by comparisons with rates claimed to be similar to other points, but which said other rates were and are affected by water and other competition to such an extent that the comparisons made offered no real test as to the reasonableness of the rates in question; that this appears from the opinion handed down by the Com-

mission with its said order of June 24, 1908; that no evidence was offered by the complainants or heard as to the actual service for which said rates were charged, the value of such service, the cost of operation, the comparative density of traffic or any of the numerous other element- which offer real tests as to whether or not a given rate is reasonable in and of itself.

The order of the Commission by reducing the particular rates in question will work a great direct loss of revenue to these petitioners. These petitioners believe that the order of the Commission will upset and disturb the entire system of rates and rate making in the territory west of the Mississippi River to the Pacific Coast.

If these petitioners desire to participate in the through traffic to the Missouri River points and points beyond, petitioners must participate in the reduction enforced by said above order of June 24, 1908.

179 These petitioners further show to the Commission that the lowering of the rates from the Mississippi River crossing points on through shipments from the east to the said Missouri River cities works an undue disadvantage and discrimination against Chicago and the Mississippi River points, and reduces the rate charged by your petitioners for transportation from the Mississippi River crossings to the Missouri River cities to a point below what would be a reasonable charge for such services, and in the end works no advantage to the said Missouri River cities, or to the original complainants, for the reason that the reduction of the proportional of the through rate from the seaboard, taken by these petitioners, will necessitate a further reduction and adjustment of rates in the territory beyond the Missouri River, so that the same relative situation existing at the time of the filing of the original complaint herein will be again presented, and a further reduction will be then asked in the proportional coming to these petitioners and other roads carrying freight between the Mississippi River and Missouri River points. The result would be that the rates would then be lower, but would be relatively the same as before the filing of said complaint.

These petitioners desire to have the opportunity of offering evidence before the Commission, in case a rehearing or reconsideration of this case is granted, tending to prove the facts and conclusions above set forth, and in particular tending to show that under all the circumstances the rates complained of in said original complaint for the carriage of goods from the Mississippi River crossings to the said Missouri River cities, as part of the through rate from the seaboard, was a reasonable and fair rate and a just compensation for the services performed; and further evidence tending to show that the

180 necessary result of the enforcement of the said order of June 24, 1908, would be to deprive the Cities of St. Louis and Chicago and other distributing points similarly situated of the markets west of the Missouri River.

The present basis of rates from the Atlantic seaboard territory to the Missouri River points and to points beyond has been in existence for many years and all business conditions in said territory have grown up under said basis of rates, or in other words, all rates to territory west of the Mississippi River have been based for many

years on the Mississippi River and such rates have been made by the combination of rates to and from the Mississippi River.

If it is the intention of this Honorable Commission to change the existing basis of rates into this territory, as these petitioners understand from its opinion herein, the effect thereof will necessarily extend to all rates from not only seaboard territory, but from all intermediate points, and not merely to the Missouri River, but to all territory beyond, and will be wider reaching as to its effect than any order heretofore made by this Commission; and before such order is finally put into effect all interests, which will be directly affected, should be allowed an opportunity to be heard, and your petitioners should be given an opportunity to introduce evidence as hereinbefore and hereafter stated.

These petitioners further show that under the said order of June 24, 1908, the whole reduction in the through rates from the seaboard to said Missouri River cities is made to fall upon the railroads operating west of the Mississippi River crossings, including all your petitioners; that no evidence was introduced at the hearing before this Honorable Commission tending to show that the reduction should so fall upon the proportional of the through rate from the seaboard to said Missouri River cities, received by these petitioners

181 and the other roads defendants in said cause operating west of the Mississippi River; that, in case a rehearing or reconsideration of the said cause is granted by the commission, your petitioners will be ready and will offer to introduce testimony tending to show that in case any reduction of said through rate from the seaboard to said Missouri River cities were just, a fair share of said reduction should fall upon the proportional of said through rate received by the eastern roads operating between the seaboard and the Mississippi River crossings, or between the seaboard and Chicago.

These petitioners further state that the rate from the Mississippi River points to said Missouri River cities, which is part of the through rate from the Atlantic seaboard territory and retained by these petitioners and the original defendants to this cause is, in comparison with the local rate from said Mississippi River crossings to said Missouri River cities, a fair and reasonable rate, for the reason that practically the same amount of service in the way of handling, loading and unloading, and in transferring from car to car, is needed and, in fact, is supplied as in the case of a shipment from the Atlantic seaboard territory to St. Louis with a reshipment by the St. Louis consignees to said Missouri River cities. That the conditions of the through service from the Atlantic seaboard to the said Missouri River cities is such as not to warrant, except in comparatively few cases, the use of through cars between the seaboard territory and the Missouri River points; that in a great majority of cases shipments billed through to any one Missouri River point do not occupy a whole car, and, for that reason, must be transferred at Chicago or at a Mississippi River point to other cars loaded with shipments for the intended destination. The expense, therefore, of the western portion of the through haul is as great as would be the local haul from Chicago and the Mississippi River points to said Missouri River cities.

182 Petitioners further believe that numerous commodity rates between the Mississippi River crossings and the Missouri River points and points beyond will necessarily be reduced as a result of said order; they believe that the local rate between St. Louis and the Missouri River points will probably be reduced for the same reason, that such reductions are bound to produce similar reductions in rates to points west of and beyond said Missouri River points, particularly in the States of Nebraska and Kansas, whereby your petitioners' business would be irreparably and unjustly injured. Petitioners believe that since the reduction ordered is only on rates from the Atlantic seaboard, discrimination will be claimed to result against such points as Cleveland, Pittsburg, Detroit and the general intermediate territory. Petitioners necessarily will be harassed with numerous complaints before this commission and before various state rate-making commissions, and the loss of revenue involved and threatened by said order of June 24, 1908, is so great as to cause petitioners the gravest apprehension.

Petitioners believe and so state the fact to be that the rates affected by said order of June 24, 1908, are reasonable, just and proper rates in and of themselves and not unjustly discriminatory to the complainants in said complaint, nor in any way whatsoever violative of any of the provisions of said act to regulate commerce and the acts amendatory thereof and supplemental thereto.

Petitioners believe that said order of June 24, 1908, not only vitally affects these petitioners, but also will affect numerous localities who were in nowise represented at said hearing, and will tend to disrupt and disturb all the economic and trade relations dependent upon a stable freight rate adjustment.

The petitioners therefore pray that the Commission grant a rehearing and reconsideration of the questions raised by said
183 complaint and covered by said opinion and order of June 24, 1908, that the commission issue an order to take effect at once staying the enforcement of said order of June 24, 1908, that these petitioners be permitted to intervene in said cause as additional defendants and to introduce evidence as to the matters set forth in this petition and as to the reasonableness in and of themselves of the rates reduced by said order, and for such further orders and relief in the premises as to the Commission may seem meet.

ILLINOIS CENTRAL RAILROAD COMPANY,
ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY,
CHICAGO & ALTON RAILROAD COMPANY,
MISSOURI PACIFIC RAILWAY COMPANY,
THE MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY,
THE ST. LOUIS & SAN FRANCISCO
RAILROAD COMPANY,

By COLIN C. H. FYFFE, *Their Attorney.*

WILLIAM D. McHUGH,
COLIN C. H. FYFFE,

Attorney- and of Counsel for Petitioners.

184

Oath.

STATE OF ILLINOIS,
County of Cook, ss:

E. B. Boyd, being first duly sworn, on oath deposes and says that he is the assistant to the vice-president of the Missouri Pacific Railway Company, one of the petitioners in the petition to which this affidavit is attached, that he has read the said petition and knows the contents thereof and that the allegations thereof are true except where stated upon information and belief, and as to such allegations affiant believes them to be true.

(Signed)

E. B. BOYD.

Subscribed and sworn to before me, a notary public in and for the County of Cook and State of Illinois, this 16th day of September, A. D. 1908.

(Signed)

CORNELIUS LYNDE,

[NOTARIAL SEAL.]

Notary Public.

185 & 186 (Endorsed:) Filed Nov. 6, 1908. H. S. Stoddard,
Clerk.

187 And afterwards to-wit: on the ninth of November, 1908, the complainants by their solicitors filed in the clerk's office of said court their certain replication in words and figures following to-wit:

188

Replication.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHICAGO, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Northwestern Railway Company; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, Complainants,

vs.

INTERSTATE COMMERCE COMMISSION, Defendant.

Replication to Answer.

Come now the complainants herein, replicants herein, and saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, the Interstate Commerce Commission, for replication thereunto say that they do and will aver, maintain and prove their said bill of complaint herein to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the

said defendant is very uncertain, evasive and insufficient in law to be replied unto by these replicants, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all of which matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

WILLIAM D. McHUGH,
COLIN C. H. FYFFE,
Solicitors for Complainants.

(Endorsed:) Filed Nov. 9, 1908, H. S. Stoddard, Clerk.

190 And afterwards to-wit: on the first day of December, being one of the days of the Regular July Term of said court, 1908, in the record of proceedings thereof in said entitled cause before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable William H. Seaman, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

191 *Order of Dec. 1, 1908, Giving Burnham, Hanna, Munger Dry Goods Company et al. Leave to File Intervening Petition. Cause Referred to Special Examiner to Take Testimony.*

In Equity. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Upon the application of

Burnham, Hanna, Munger Dry Goods Company, a corporation.

Swofford Brothers Dry Goods Company, a corporation.

Smith-McCord-Townsend Dry Goods Company, a corporation.

William Barton, K. L. Barton and G. A. Barton, co-partners as *as* Barton Brothers.

Maxwell-McClure-Fitts Dry Goods Company, a corporation.

F. A. Faxon and J. A. Gallagher, co-partners as Faxon & Gallagher.

Ellet-Kendall Shoe Company, a corporation.

McPike Drug Company, a corporation.

Evans-Smith Drug Company, a corporation.

- Richards & Conover Hardware Company, a corporation.
Woodson Smith Hat Company, a corporation.
Jay & King Hat Company, a corporation.
Townley Metal and Hardware Company, a corporation.
Emery, Bird, Thayer Dry Goods Company, a corporation.
- 192 John Taylor Dry Goods Company, a corporation.
George B. Peck Dry Goods Company, a corporation.
Jones Dry Goods Company, a corporation.
Webb-Freyschlag Mercantile Company, a corporation.
Kelly & Williams Druggists' Sundry Company, a corporation.
- Baker & Lockwood Manufacturing Company, a corporation.
Campbell Glass and Paint Company, a corporation.
Cutler Paint and Glass Company, a corporation.
Faeth Iron Company, a corporation.
Joseph D. Havens Company, a corporation.
J. W. Jenkins' Sons Music Company, a corporation.
Robert Keith Furniture and Carpet Company, a corporation.
Kansas City Paper House, a corporation.
Kansas City Roofing and Corrugating Company, a corporation.
- Ryley-Wilson Grocer Company, a corporation.
Ridenour-Baker Grocery Company, a corporation.
Western Grocer Company, a corporation.
Jacoby Furniture Company, a corporation.
G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer,
partners under the firm name of G. Bernheimer Brothers
& Company.
- Tootle, Wheeler & Motter Mercantile Company, a corporation.
John S. Brittain Dry Goods Company, a corporation.
Hundley Dry Goods Company, a corporation.
Richardson Dry Goods Company, a corporation.
M. E. Smith & Company, a corporation.
Byrne & Hammer Dry Goods Company, a corporation.
F. P. Kirkendall & Company, a corporation.
American Hand Sewed Shoe Company, a corporation.
Hayward Brothers Shoe Company, a corporation.
D. J. O'Brien Company, a corporation.
Thomas Kilpatrick & Company, a corporation.
H. A. Thompson and C. C. Belden, co-partners as Thompson,
Belden & Company.
- Orchard & Wilhelm Carpet Company, a corporation.
M. Levy, H. Cohn and M. Strausberger, co-partners as Ne-
braska Clothing Company.
- 193 Browning, King & Company, a corporation.
Berg-Swanson Company, a corporation.
Miller, Stewart & Beaton Carpet and Furniture Company, a
corporation.
E. E. Bruce & Company, a corporation.
The Bennett Company, a corporation.

Hayden Brothers, a corporation.

M. Spiesberger & Son Company, a corporation, and

J. L. Brandeis & Sons, a corporation.

It is ordered that they have leave to file their petition of intervention as defendants herein; and that their petition tendered to the Court be, and the same is, hereby considered and adjudged to be their petition of intervention; and that the matters in their said petition referred to and sought to be incorporated therein may be treated as a part of their said petition of intervention, and which petition of intervention shall be treated as the answer of the said intervening defendants to the bill of complaint of the Chicago, Rock Island & Pacific Railway Company, et al., and to the intervening petition of the Illinois Central Railroad Company, et al., and to which the complainants in the original bill of complaint and the intervening railroad companies may have leave to file their replication.

To the granting of the said petition of intervention the Interstate Commerce Commission duly objects and which objection being overruled by the Court the Interstate Commerce Commission duly excepts.

Upon the application of the complainants in the original bill of complaint and the railway companies, intervenors herein, and upon due notice given in accordance with the Rules of Court and law,

It is ordered that Mr. J. L. Bennett be, and he is, hereby appointed Special Examiner for the purpose of taking all the testimony in the above entitled cause and report the same to the Court in accordance with the Rules thereof.

To the appointment of any Special Examiner the defendant, Interstate Commerce Commission, duly objects on the ground that no evidence is proper to be admitted or considered by this Court in the cause herein save the testimony which was presented to and considered by the Interstate Commerce Commission on the hearing before it out of which the order complained of grew.

The Court overruled said objection, to which action of the Court the defendant, Interstate Commerce Commission, duly excepts.

By agreement of the parties to the above entitled cause, it is further ordered that the said Special Examiner may take the testimony in shorthand and afterwards extend the same in typewriting.

And on the same day to-wit: on the first day of December, 1908, there was filed in the Clerk's office of said court, in said entitled cause, a certain Intervening Petition on behalf of the Burnham, Hanna, Munger Dry Goods Company, and others, in words and figures following to-wit:

196 *Intervening Petition on Behalf of Burnham, Hanna, Munger Dry Goods Company et al.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

Number 29247.

In Chancery.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation,

VS.

THE INTERSTATE COMMERCE COMMISSION.

Intervening petition on behalf of

Burnham, Hanna, Munger Dry Goods Company, a corporation.

Swofford Brothers Dry Goods Company, a corporation.

Smith-McCord-Townsend Dry Goods Company, a corporation.

197 William Barton, K. L. Barton and G. A. Barton, co-partners as Barton Brothers.

Maxwell-McClure-Fitts Dry Goods Company, a corporation.

F. A. Faxon and J. A. Gallagher, co-partners as Faxon & Gallagher.

Ellet-Kendall Shoe Company, a corporation.

McPike Drug Company, a corporation.

Evans-Smith Drug Company, a corporation.

Richards & Conover Hardware Company, a corporation.

Woodson Smith Hat Company, a corporation.

Jay & King Hat Company, a corporation.

Townley Metal and Hardware Company, a corporation.

Emery, Bird, Thayer Dry Goods Company, a corporation.

John Taylor Dry Goods Company, a corporation.

George B. Peck Dry Goods Company, a corporation.

Jones Dry Goods Company, a corporation.

Webb-Freyschlag Mercantile Company, a corporation.

Kelly & Williams Druggists' Sundry Company, a corporation.

Baker & Lockwood Manufacturing Company, a corporation.

Campbell Glass and Paint Company, a corporation.

Cutler Paint and Glass Company, a corporation.

Faeth Iron Company, a corporation.

Joseph D. Havens Company, a corporation.

J. W. Jenkins' Sons Music Company, a corporation.

- Robert Keith Furniture and Carpet Company, a corporation.
- 198 Kansas City Paper House, a corporation.
- Kansas City Roofing and Corrugating Company, a corporation.
- Ryley-Wilson Grocer Company, a corporation.
- Ridenour-Baker Grocery Company, a corporation.
- Western Grocer Company, a corporation.
- Jacoby Furniture Company, a corporation.
- G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer, partners under the firm name of G. Bernheimer Brothers & Company.
- Tootle, Wheeler & Motter Mercantile Company, a corporation.
- John S. Brittain Dry Goods Company, a corporation.
- Hundley Dry Goods Company, a corporation.
- Richardson Dry Goods Company, a corporation.
- M. E. Smith & Company, a corporation.
- Byrne & Hammer Dry Goods Company, a corporation.
- F. P. Kirkendall & Company, a corporation.
- American Hand Sewed Shoe Company, a corporation.
- Hayward Brothers Shoe Company, a corporation.
- D. J. O'Brien Company, a corporation.
- Thomas Kilpatrick & Company, a corporation.
- H. A. Thompson and C. C. Belden, co-partners as Thompson, Belden & Company.
- Orchard & Wilhelm Carpet Company, a corporation.
- M. Levy, H. Cohn and M. Strausberger, co-partners as Nebraska Clothing Company.
- Browning, King & Company, a corporation.
- Berg-Swanson Company, a corporation.
- Miller, Stewart & Beaton Carpet and Furniture Company, a corporation.
- 199 E. E. Bruce & Company, a corporation.
- The Bennett Company, a corporation.
- Hayden Brothers, a corporation.
- M. Spiesberger & Son Company, a corporation.
- J. L. Brandeis & Sons, a corporation.

To the Honorable the Judges of the Circuit Court of the United States, within and for the Northern District of Illinois, Eastern Division, in Chancery, Sitting:

I.

The above named petitioners respectfully show that the following named corporations are duly organized and existing by virtue of law, having their principal places of business in the City of Kansas City, Jackson County, Missouri, to-wit:

Townley Metal and Hardware Company; Emery, Bird, Thayer Dry Goods Company; George B. Peck Dry Goods Company; Jones Dry Goods Company; Webb-Freyschlag Mercantile Company; Kelly

& Williams Druggists' Sundry Company; Baker & Lockwood Manufacturing Company; Campbell Glass and Paint Company; Cutler Paint and Glass Company; Faeth Iron Company; Joseph D. Havens Company; J. W. Jenkins' Sons Music Company; Robert Keith Furniture and Carpet Company; Kansas City Paper House; Kansas City Roofing and Corrugating Company; Ryley-Wilson Grocer Company; Ridenour-Baker Grocery Company; Western Grocery Company; Jacoby Furniture Company; Maxwell-McClure-Fitts Dry Goods Company; Swofford Brothers Dry Goods Company; Burnham, Hanna, Munger Dry Goods Company; McPike Drug Company; Evans-Smith Drug Company; Richards & Conover Hardware Company; Woodson Smith Hat Company; Jay & King Hat Company; John Taylor Dry Goods Company.

These petitioners further show that G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer are partners doing business at said city under the firm name and style of G. Bernheimer Brothers & Company; that William Barton, K. L. Barton and G. A. Barton are partners doing business at said city under the firm name of Barton Brothers; that F. A. Faxon and J. A. Gallagher are partners in said city under the name of Faxon & Gallagher.

These petitioners further show that the following named corporations are duly organized and existing under and by virtue of law and have their principal places of business in the City of St. Joseph, Buchanan County, State of Missouri, to-wit:

Tootle, Wheeler & Motter Mercantile Company, John S. Brittain Dry Goods Company; Hundley Dry Goods Company, Richardson Dry Goods Company.

These petitioners further show that the following named corporations are duly organized and existing by virtue of law and have their principal places of business in the City of Omaha, State of Nebraska, to-wit:

M. E. Smith & Company; Byrne & Hammer Dry Goods Company, American Hand Sewed Shoe Company; Hayden Brothers; D. J. O'Brien Company; E. E. Bruce & Company; The Bennett Company; Thomas Kilpatrick & Company; Orchard & Wilhelm Carpet Company; Browning, King & Company; Berg-Swanson Company; M. Spiesberger & Son Company; Miller, Stewart & Beaton Carpet and Furniture Company; J. L. Brandeis & Sons; F. P. Kirkendall & Company; Hayward Brothers Shoe Company.

These petitioners further show that said H. A. Thompson and C. C. Belden are co-partners doing business at Omaha, Nebraska, under the firm name and style of Thompson, Belden & Company; that M. Levy, H. Cohn and M. Strausberger are partners doing business at said city under the firm name of Nebraska Clothing Company.

II.

Your petitioners further show that all of the above named petitioners were the complainants in the proceedings had before the Interstate Commerce Commission, entitled Burnham, Hanna, Munger Dry Goods Company *et al.*, Complainants *vs.* The Chicago, Rock

Island & Pacific Railway Company, Defendants, numbered in the docket of said Interstate Commerce Commission, 983.

That a copy of the complaint of these petitioners before said Interstate Commerce Commission and which was the basis of the proceeding under said Docket No. 983, is attached to the bill of complaint herein, as "Exhibit A," and as such made a part of said bill, and these petitioners, the court permitting, refer to said exhibit, and by reference make the same a part of this petition as completely as though fully incorporated herein.

202

III.

Your petitioners further show that the decision or judgment rendered by said Commission in said case No. 983 is set out in *ha-c-verba*, as "Exhibit B," and as such attached to and made a part of the bill of complaint herein, and these petitioners, the Court permitting, refer to the same and make it a part of this petition, as fully as though incorporated herein.

IV.

Your petitioners further show that, by reason of the matters and things appearing in said petition and decision, they are vitally interested in the outcome of the above entitled cause, and that their rights are involved therein; that, while recognizing themselves to be not necessary parties to this cause, they feel and deem that they are so far proper parties, as to make it a proper exercise of the sound discretion of this Court to permit them to file this, their petition for intervention, giving them the right to intervene herein and file herein their intervening petition, and thereby to show to this Honorable Court that:

Said complaint (said "Exhibit A") was filed before the Interstate Commerce Commission on the 11th day of February, 1907; that the fact of said complaint being made, and the substance and purpose thereof was proclaimed through the newspapers and generally known, and was known to be pending before said Interstate Commerce Commission within a week from the time the same
203 was filed, by each of the intervening railroad companies herein.

Shortly thereafter, upon the application of the Chicago & Northwestern Railroad Company, a large number of other common carriers were made partners to this suit, and in the month of November, 1907, testimony was taken in Kansas City, Missouri, in said cause, and within a few days thereafter, other testimony was taken in said cause before said Commission in the City of Chicago; that at the time of the taking of said testimony in each of said places, the matter of said complaint and its purpose was the subject of newspaper discussion, and was known to each of the intervening railroads herein; that briefs were filed, and in February, 1908, oral argument had before said Commission.

Your petitioners further show that during all this time said Commission was ready to permit any party having interest in said mat-

ter to appear and be heard. This attitude of the Commission is made manifest by the fact that it permitted to intervene in the suit the business interests of the City of St. Louis, Missouri, Sioux City, Iowa, Chicago, Illinois, and St. Paul and Minneapolis, Minnesota, and upon the application aforesaid made many common carriers, which under any circumstances, could have only remote connection with the controversy, parties to said suit; and the said attitude of the Commission is further made manifest by the fact that no application was ever refused prior to judgment in said cause to make any person or corporation party, who sought to be so made; yet, 204 during all this time, none of the said intervening railroad companies, to-wit: The Illinois Central Railroad Company; the Atchison, Topeka & Santa Fe Railway Company, The Chicago & Alton Railway Company, The Missouri Pacific Railway Company, The Missouri, Kansas & Texas Railway Company, nor the St. Louis & San Francisco Railroad Company, made any application to said Commission to be made parties in said cause, or to be heard by said Commission, which laches and negligence of said last named railroad companies is such as to preclude their complaining of any action by said Commission.

V.

Your petitioners further show that, with relation to the matters set out in para-raph 1 on page 6 of the bill of complaint filed herein, they deny the allegations in said paragraph contained; and further show that it was such a matter as should have been, and was, presented to the said Commission at the time of the hearing, and considered and passed upon by said Commission, and cannot, with legal propriety, be re-considered here; and further aver that the said rates in the said paragraph referred to were not established for the purpose of being applied to all merchandise carried by the said railroads between said points, and, in fact, were not applied to all merchandise carried between said points; but, on the contrary, aver that the said railroad companies always have, and now, carry large 205 quantities of merchandise originating at various Eastern points and consigned to various Western points, at rates less than the said established rates referred to in the said paragraph.

VI.

Your petitioners say, with relation to the allegations contained in paragraph 2 of said page, that they deny the averment contained therein that the said rates are just and reasonable, and deny that the said rates only yield a fair and proper return; but, to the contrary, aver that the said rates were and are unjust and unreasonable, and aver that the said rates do yield more than a fair and proper return for the service performed; and that said matters were involved in the issue before the Interstate Commerce Commission and were submitted to the Interstate Commerce Commission upon the proofs taken by the respective parties relating thereto, and were considered and decided by the said Commission; and, by reason of the premises, the complaints and the intervening railroads should not be heard in this proceeding in that regard.

VII.

Your petitioners further aver that said matters have to do solely with the East of Mississippi River rates and are absorbed thereby, and have no connection with or relation to the rates between the Mississippi and Missouri rivers which are the subject of the Commission's orders, and which must be the subject of the consideration of the Court here, for the reason that all expenses incident to trans-shipment at Chicago, if any there be, of Atlantic seaboard shipments via Chicago to and beyond the Mississippi River, are absorbed by the through rate from the Atlantic seaboard to the Mississippi River, which is 87 cents on first class, and said absorption is made in the portion of said 87 cent rate which is charged for service between Chicago and the Mississippi River, to-wit: 14.7 cents on first class; and no part of said expense, if any there be, has to do with the cost of transportation between the Mississippi River crossings and the Missouri River cities; and further deny that any such expense is incurred; but on the other hand, aver that it costs less to the railroad companies to transport merchandise which constitutes a part of a continuous shipment from Atlantic seaboard points to Missouri River cities than it costs the said railroads to haul traffic locally from said Mississippi River crossings to said Missouri River cities.

VIII.

Your petitioners state, with relation to the matters appearing in the second paragraph on page 7 of said bill, that they admit that the said Burnham, Hanna, Munger Dry Goods Company, *et al.*, did file the complaint mentioned in said last named paragraph, and these intervenors join in complainants' prayer, that your Honors permit them to incorporate as part of their bill, and to treat as incorporated into said bill the allegations of the original complaint filed before said Commission, and which is attached to said bill as "Exhibit A."

207

IX.

Your petitioners, with reference to the matters set forth in the last paragraph or page 10 of said bill, say that they deny that the proposed reduction of rates would diminish the revenue of the railroads five hundred thousand dollars (\$500,000) annually; and further state that the allegation in said paragraph contained has no bearing upon the matters and things here to be considered, because there is no allegation accompanying the same to the effect that if said proposed reduction took place there would not be left remaining a fair return to the railroad companies from the proposed rates.

X.

Your petitioners, with reference to the matters set out in the first paragraph on page 11 of said bill, say that the same is vague, nebulous and unintelligible, because of the failure to disclose what is meant by the pleader by the term "general principle;" that so vague are the said allegations that these petitioners deem that proof thereof

is impossible and pleading response thereto by these petitioners unnecessary; but, upon the advice of counsel, deny each and singular the said averments in said paragraph contained.

XI.

With relation to the matters set out in the paragraph beginning at the bottom of page 11 of said bill, petitioners deny that the original complaint was instituted upon the theory of discrimination alone, or that said complaint as originally instituted rested upon the allegation of discrimination alone; but that said complaint averred among other things that the said rates were "excessive, unjust, unreasonable in and of themselves, because said sums and rates are higher and greater than are reasonably necessary to pay the cost of transportation and maintenance and a fair profit on a fair valuation of the property of the defendant companies employed in transporting said freight between said points."

Your petitioners also aver that said cause was instituted upon the theory and rested upon allegations, to the end of showing that said rates were unjust, unreasonable and excessive in and of themselves, and were also discriminatory as against these petitioners.

XII.

Your petitioners aver, if it be true, as averred in complainants' bill of complaint, that the local rates between the Mississippi River crossings and the Missouri River cities are necessarily dependent upon the rate which the Railroad Commission of the State of Missouri has established between St. Louis and Kansas City and St. Joe on the Missouri River, that it follows that the complainant railroad companies have been and still are charging the maximum rate which they are permitted to charge on local business between the Mississippi River crossings and the Missouri River cities, and are applying said maximum rate as a part of the through rate from the Atlantic seaboard to the said Missouri River cities, and are not making
209 any allowance or reduction arising out of the fact that the said Atlantic seaboard business involved in this litigation is through business and not local business; and your petitioners further aver that it is a presumption of law and of fact that a maximum rate on local business is too high and is unreasonable and unjust when made a part of a through rate.

XIII.

With relation to the matters set out in the first paragraph of page 13 of said bill, petitioners say that it is true that these petitioners have never alleged that the East of Chicago rates are unjust, but always have and still do, recognize the presumption that said rates are reasonable and just until the contrary is shown, and that if it be true that any lowering of the West of Chicago and West of Mississippi River Rates would have destroyed an existing proper proportion between the portions of the established rate East and West of Chicago and East and West of the Mississippi River, that that was a matter

proper to have been presented to the Commission and cannot with propriety be presented in this Court for the first time.

XIV.

Your petitioners, in further answer to the averments in the paragraph of the bill of complaint, beginning at the bottom of page 13, deny that the rates sought to be established by the said order of the Commission are, in effect, joint through rates; but to the contrary, aver that the said order applies only to the rates between the Mississippi River crossings and the Missouri River cities as parts of a through rate, as distinguished from a joint rate, from the Atlantic seaboard; and, wherefore, your petitioners deny each and singular, all the averments of the said paragraph, and deny that the Interstate Commerce Commission, in the making of the said order, exceeded the powers conferred upon it by the said Act to Regulate Commerce, as amended; and deny that the said order of the Interstate Commerce Commission deprives the said railroad companies, or any of them, of property without due process of law; and deny that the said order was in any respect a violation of the Constitution of the United States and Fifth Amendment thereof.

XV.

With reference to certain matters set out in the paragraph beginning on page 16 of said bill, petitioners say that the reason given for a judgment are no part of the judgment, and if erroneous will not disturb the judgment, if the judgment be sound, and while denying the averments with relation to the Commission's reasons for rendering its judgment, these petitioners say that said allegations have no part or place in any pleading; and further petitioners specifically deny that the Commission have compelled or commanded any of the railroads, parties to this suit, to carry goods for anybody at a rate higher than said railroads desire to; and to the allegations in the said last referred to paragraph, with relation to the cost of operation, etc., these petitioners say that said matters are matters that should have been presented to the Commission, and if not so presented, cannot be with legal propriety presented in this Court now.

For further answer to the averments in the paragraph beginning at the bottom of page 14 and extending on to page 15 of the bill of complaint, your petitioners deny that the rates for the transportation of merchandise from Mississippi River crossings to the said Missouri River cities as a portion of the through rate on Atlantic seaboard business are just and reasonable in and of themselves; and, to the contrary, aver that said rates are unjust, unreasonable, excessive and exorbitant; and further aver that at the hearing before the said Interstate Commerce Commission evidence was introduced tending to show that the said rates were unreasonable, unjust and unlawful in and of themselves; and they deny each and singular the averments in the said paragraph contained.

And your petitioners further deny that the said Interstate Commerce Commission held that the rates for transportation of merchan-

dise between the said Mississippi River crossings and said Missouri River cities should not be lowered when applied to merchandise not originating at Atlantic seaboard points; but, to the contrary, aver that the said Interstate Commerce Commission made no order with reference to the rates to be applied to merchandise originating at intermediate points, and that, for the reason that no issue was
212 made as to them, and that the proper parties were not before the Interstate Commerce Commission at such hearing for such investigation or order.

And your petitioners further deny each and singular all the averments in the said paragraph contained; and also deny each and singular all the averments contained in the paragraph beginning on page 15 and extending on to page 16 not hereinbefore specifically denied or pleaded unto.

XVI.

With relation to the matters set out in the paragraph beginning at the top of page 17 of said bill, petitioners say that if the complainants are exercised over the rights of the intervening railroad companies and deem they are necessary parties to said original cause, they should have moved to have them made parties as they did the East of Chicago lines, and further state that the Commission with propriety refused to consider the petition of intervention presented by the intervening railroads, because they had slept on their rights, if any they had, and deferred seeking to be made parties until after the judgment had been rendered, and then did so with a view of further delaying the time when said proposed rates should become effective, and in making said application to intervene failed to show to the Commission any reason for their laches and long delay.

213

XVII.

Petitioners say, with reference to the matters set out in the paragraph beginning on page 18 of said bill, that the fact that litigation may result against complainants is no ground for injunctive action by this court unless it appears that said actions are not the outcome of violated rights.

XVIII.

These petitioners refer to the answer heretofore filed by the defendant herein, and, the court permitting, by reference adopts the same and incorporates its allegations into this petition as fully as though set out herein.

XIX.

These petitioners further say, with relation to all the matters and things contained in said bill of complaint and said petition of intervention, not herein specifically denied, that they deny the same and deny all allegations and averments in said bill and petition contained, save and except such as are by this, their petition, specifically admitted to be true.

Wherefore, these petitioners pray that the Court make an order allowing these petitioners to be made parties defendant in the above

cause, with the right to present testimony and argument to the Court, upon such terms and conditions as to this Court seem good; and that the foregoing and the allegations thereof be deemed and considered these petitioners' intervening petition.

JOHN H. ATWOOD,
JOHN L. WEBSTER,
GEORGE T. BELL,

Solicitors for Intervening Petitioners.

JOHN H. ATWOOD,
JOHN L. WEBSTER,
W. LITTLEFIELD,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

George T. Bell, being first duly sworn, on oath deposes and says that he is the duly authorized agent and representative of all the petitioners here petitioning, that he knows the contents of the foregoing petition, and that the allegations therein contained are true.

GEORGE T. BELL.

Subscribed and sworn to before me this 30th day of November, A. D. 1908.

My commission expires January 10, 1909.

EDMUND D. BIGELOW,
*Notary Public in and for
Jackson County, Missouri.*

(Endorsed:) Filed December 1, 1908. H. S. Stoddard, clerk.

216 And afterwards to-wit: on the fourteenth day of December, 1908, there was filed in the Clerk's office of said court in said entitled cause a certain Answer of the defendant to the intervening petition of Illinois Central Railroad Company, and others, in words and figures following, to-wit:

217 *Answer of Interstate Commerce Commission to Intervening
Petition of Illinois Central Railroad Company et al.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, CHICAGO, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company; Chicago & Northwestern Railway Company, and Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company,

v.

INTERSTATE COMMERCE COMMISSION.

The answer of Interstate Commerce Commission to intervening petition of Illinois Central Railroad Company; Atchison, Topeka & Santa Fe Railway Company; Chicago & Alton Railroad Company; Missouri Pacific Railway Company; Missouri, Kansas & Texas Railway Company, and St. Louis & San Francisco Railroad Company, cocomplainants herein.

This defendant, Interstate Commerce Commission, now and at all times hereafter saving to itself any and all manner of benefit and advantage of exception, or otherwise, that can, or may
218 be, had or taken to the many errors, uncertainties, and imperfections in said intervening petition contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for it to make answer, answering says:

I.

That this defendant is a bureau, or department, of the Government of the United States which was created and established, and now exists, under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by subsequent acts, and particularly as amended by the act of June 29, 1906; and

That the intervening petitioner The Illinois Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; the intervening petitioner the Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas; the intervening petitioner the Chicago & Alton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; the intervening petitioner the Missouri Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri; the

intervening petitioner the Missouri, Kansas & Texas Railway Company, a corporation organized and existing under and
219 by virtue of the laws of the State of Kansas; and the intervening petitioner the St. Louis & San Francisco Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, are common carriers engaged in the interstate transportation of passengers or property, wholly by railroad or partly by railroad and partly by water, and as such common carriers and in respect to such transportation are subject to the provisions of said act entitled "An act to regulate commerce" as amended by said act of June 29, 1906.

II.

Defendant says that the intervening petitioners should not be heard to maintain this intervening petition as cocomplainants in this equity suit herein, for that the said intervening petitioners were not at any time parties to the complaint before this defendant out of which complaint, the answer thereto, and the hearing thereon, the order complained of herein grew; for that said petitioners are not bound by, or compelled to abide by, the order complained of; for that the order complained of does not run against, or operate upon, said petitioners; and for that said petitioners are guilty of laches in that they, and each of them, have failed in due season to take the action required and permitted by the act to regulate commerce.

Defendant further avers that these intervening petitioners, and each of them, well knew ever since the month of February,
220 1907, that a complaint had been made to this defendant challenging the reasonableness of the rates between points embraced in the order of this defendant complained of in the bill of complaint herein. Defendant further avers that said intervening petitioners filed their petition of intervention before this defendant on or about the 18th day of September, 1908, nearly three months after the order of the defendant reducing rates had been made, and only six days before the said order was to become effective; that said complaint, had been pending before this defendant since the 11th day of February, 1907; that from said last-mentioned date until the making of said final order by this defendant, the pendency of said proceeding was well known to all of said intervening petitioners; that, notwithstanding their full knowledge of the pendency of said proceedings and of the taking of the evidence in said case and of the time of the arguments of said case before this defendant, and of the coming down of the said order of this defendant, the said intervening petitioners wilfully and knowingly permitted the said proceedings to go on without any complaint upon their part, or without any notification to the Commission that they, or any of them, desired to intervene or otherwise to be heard in the said proceedings, until said 18th day of September, 1908, when they presented their petition in the form of an intervention; that it did not appear from the said petition of intervention that said intervenors were in possession of any facts or sought to present before this defendant
221 any facts or arguments which had not been presented by the railroad companies which were parties to the said proceed-

ings, or any evidence which was not considered by this defendant prior to the making of the order complained of.

Defendant further avers, upon information and belief, that the purpose of tendering said petition of intervention at said time was in part for the purpose of securing a postponement of the date when the said order of this defendant reducing rates should become effective.

Defendant further avers that there is a complete harmony of interest between the parties complainant herein and the intervening petitioners herein; that said complainants and said intervening petitioners have at all times acted in full accord and in full understanding and with the definite intention of in all things acting for their mutual interest; that said unity of interest is shown by the fact that counsel for complainants in this case were attorneys for the intervening petitioners in the filing of said intervening petition before this defendant.

III.

Defendant denies that it did not consider in any manner the question of the relative cost involved to railways performing the service of transporting goods to Missouri River cities where the shipment begins at the eastern terminals of complaints herein, as contrasted with the service performed when the shipments originate on the Atlantic seaboard. On the contrary, defendant avers that it did consider said question of relative costs as one of the elements necessary to determine what is a reasonable rate of transportation. Defendant further avers that in prescribing the rates in said order it considered all the testimony offered before it by either party to the proceeding before this defendant, together with all available information which in any wise is pertinent to the determination of what are reasonable rates between the points covered by the complaint before this defendant.

Defendant hereby invokes in this behalf in answer to the intervening petition herein, and prays that they may be so taken by this honorable court, all the allegations of the answer to the original bill of complaint herein.

IV.

Defendant avers that the order complained of is in every sense a valid and lawful order and does not in any wise infringe any of the rights of intervening petitioners herein, either under the statute or under the Constitution of the United States, and is, so far as said intervening petitioners or others are concerned, a regular, lawful, and valid order.

Defendant further avers that the rates established in and by said order are just and reasonable rates and would afford to said intervening petitioners a fair and proper return for the service involved in such transportation.

V.

Defendant therefore denies generally each and all of the allegations of intervening petitioners' bill not specifically denied herein,

and which the defendant is advised is material or necessary to be answered, and says that the conclusions, inferences, and arguments therein are erroneous and without foundation; and defendant says that the rates which it prescribed are in all things just and reasonable, and will afford to each of the carriers subject to said order a just compensation in all instances for the service performed. Defendant denies that the intervening petitioners are in any wise entitled to the relief or any part thereof prayed for in said intervening petition, or any relief whatsoever, and the defendant claims the same advantage of this, its answer thereto, as if it had demurred to said intervening petition, and prays to be dismissed with its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,
By EDWARD A. MOSELEY,
Secretary Thereof, Thereunto Duly Authorized.
EDWIN W. SIMS, *United States Attorney.*
LUTHER M. WALTER,
Solicitors for Defendant.

224 WASHINGTON,
District of Columbia, ss:

Edward A. Moseley, Secretary of the Interstate Commerce Commission, being first duly sworn, says on oath that he knows the contents of the foregoing answer and the matters and things stated therein are true to the best of his knowledge and belief.

EDWARD A. MOSELEY.

Subscribed and sworn to before me this the — day of December, 1908.

[SEAL.]

H. S. MILSTEAD,
Notary Public.

(Endorsed:) Filed Dec. 14, 1908. H. S. Stoddard, clerk.

225 And afterwards to-wit: on the twenty-second day of March, 1909, there was filed in the Clerk's office of said court, in said entitled cause, a certain Motion of the defendant, in words and figures following to-wit:

226 *Motion to Dissolve Restraining Order.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.
vs.

INTERSTATE COMMERCE COMMISSION.

Now comes the Interstate Commerce Commission, by Edwin W. Sims and Luther M. Walter, its solicitors herein, and moves this

Honorable Court to dissolve the temporary injunction or restraining order granted in this case, complainants having announced that they have no further testimony to introduce, on the ground that the testimony taken herein before the Special Examiner on behalf of complainants fails to show clearly or at all that complainants were or are entitled to the relief granted by this Court or to any relief whatever.

EDWIN W. SIMS,
LUTHER M. WALTER,
Solicitors for Defendant.

(Endorsed:) Filed Mar. 22, 1909. H. S. Stoddard, Clerk.

227 And afterwards to-wit: on the twentieth day of April, 1909, being one of the days of the Regular December Term of said court, 1908, in the record of proceedings thereof in said entitled cause before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaat, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

228 *Order of April 20, 1909, Motion to Dissolve Restraining Order Taken under Advisement.*

No. 29247.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.
VS.

INTERSTATE COMMERCE COMMISSION.

Now come the parties by their solicitors and now comes on to be heard the motion of the defendant to dissolve the injunction, heretofore entered in this cause, and the Court having heard the arguments of counsel to conclusion and not being sufficiently advised takes time to consider.

229 And on the same day to-wit: the twentieth day of April, 1909, being one of the days of the Regular December Term of said court, 1908, in the record of proceedings thereof in said entitled cause before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaat, Circuit Judges for the Seventh Judicial Circuit, appears the following entry, to-wit:

- 230 *Order of April 20, 1909, Leave Given A. J. Lindeman and Hoveison Company et al. to File Intervening Petition.*

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.
vs.

INTERSTATE COMMERCE COMMISSION.

Leave is hereby given A. J. Lindeman and Hoveison Company of Milwaukee, Wisconsin; Roberts, Johnson and Rand Shoe Company, Whitelaw Bros., The Simons Hardware Company, of St. Louis, Missouri; Sprague, Warner and Company, Carson, Pirie, Scott and Company, of Chicago, Illinois; Kemiweld Can Company, Parke, Davis and Company, of Detroit, Michigan; and Sherwin-Williams Company, of Cleveland, Ohio, to file an intervening petition herein instantler.

- 231 And on the same day to-wit: on the twentieth day of April, 1909, there was filed in the Clerk's office of said court in said cause, a certain Intervening Petition on behalf of A. J. Lindemann and Hoveison Company, and others, in words and figures following, to-wit:

- 232 *Intervening Petition of A. J. Lindemann and Hoveison Company and Others.*

- 233 UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division. In Chancery.

No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Intervening Petition on Behalf of A. J. Lindemann and Hoveison Company, of Milwaukee; Wisconsin; Roberts, Johnson and Rand Shoe Company, Whitelaw Bros., The Simmons Hardware Company, of St. Louis, Missouri; Sprague, Warner and Company, Carson, Pirie, Scott and Company, of Chicago, Illinois; Kemiweld Can Company, Parke, Davis and Company, of Detroit, Michigan; Sherwin-Williams Company, of Cleveland, Ohio, to be made Co-Complainants.

Your petitioners, A. J. Lindemann and Hoveison Company, a corporation, organized and existing under and by virtue of the laws

of Wisconsin, Roberts, Johnson and Rand Shoe Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, Oscar L. Whitelaw and Robert H. Whitelaw, co-partners, doing business under the firm name of Whitelaw Brothers, The Simmons Hardware Company, a corporation organized and existing under the laws of the State of Missouri; Sprague, Warner and Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; John T. Pirie, Andrew McLeish, Samuel C. Pirie, John E. Scott, John T. Pirie, Jr., and J. W. Scott, doing business under the firm name of Carson, Pirie, Scott and Company; Kemiweld Can Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan; Parke, Davis and Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan; Sherwin-Williams Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio, respectfully show unto your Honors that your petitioner A. J. Lindemann and Hoveison Company is engaged in the business of jobbing and manufacturing stoves in the City of Milwaukee, State of Wisconsin; that your petitioner Roberts, Johnson and Rand Shoe Company is engaged in the wholesale boot and shoe business; that your petitioners Whitelaw Brothers are dealers in chemicals; that your petitioner The Simmons Hardware Company is engaged in the wholesale and retail hardware business, in the City of St. Louis, in the State of Missouri; that your petitioner Sprague, Warner and Company is engaged in the wholesale grocery business in the City of Chicago; that your petitioners Carson, Pirie, Scott and Company are engaged in the wholesale and retail dry goods business in the City of Chicago, in the State of Illinois; that your petitioner the Kemiweld Can Company is a manufacturer and dealer in fibre cans, and your petitioner Parke, Davis and Company is engaged in the wholesale chemical business, both at the City of Detroit, in the State of Michigan; that your petitioner Sherwin-Williams Company is a manufacturer of paints and varnish in the City of Cleveland, State of Ohio.

Your petitioners further show that they have each been engaged in conducting their several businesses for many years last past.

II.

Your petitioners further show that on the 17th day of October, A. D. 1908, the complainants herein, namely, Chicago, Rock Island & Pacific Railway Company, a corporation, Chicago, Burlington & Quincy Railroad Company, a corporation, Chicago, Milwaukee & St. Paul Railway Company, a corporation, Chicago & Northwestern Railway Company, a corporation, and Alpheus B. Stickney and Charles H. F. Smith, receivers of Chicago Great Western Railway Company, a corporation, exhibited their original bill of complaint in said cause against the Interstate Commerce Commission, as defendant, praying that upon the filing of said bill a temporary order might be entered therein suspending a certain order of the said

236 Interstate Commerce Commission, entered by the said defendant on June 24, 1908, and set forth in words and figures in the body of said bill, and restraining the enforcement of the said order, and restraining the said Commission from taking any steps or instituting any proceedings to enforce the said order, and praying further that upon a final hearing of said cause a decree might be entered setting aside and annulling the said order of the said Interstate Commerce Commission and perpetually enjoining the said Commission, its members, and their agents and representatives and servants from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of said order. For greater certainty your petitioners refer to said bill of complaint and the prayer thereof, and the order of said Commission, therein contained, and your petitioners say that they adopt all and singular the allegations of said original bill of complaint, to the same extent as if said allegations were herein made.

Your petitioners further represent that in the conduct of their business, they sell merchandise to merchants and business houses in the Missouri River cities and west thereof; that they sell merchandise at said Missouri River cities and west thereof in competition with merchants located in what is known as the Atlantic Seaboard territory, and also with merchants located at the Missouri River cities; that in most cases, the sales are made on comparatively small margin of profit and that any advantage accorded their competitors located either at the Atlantic Seaboard or the Missouri River cities aforesaid, would be a serious detriment to the business of
237 your petitioners, and to the development thereof; that an advantage accorded their said competitors in freight rates

between the Mississippi and Missouri Rivers, would entail upon your petitioners, not only the loss of the difference in rates, but the mere fact of the difference would prove very effective in the placing of orders for goods with their said competitors rather than your petitioners, because of the fact that said competitors were given the lower rate. That such difference in freight rates would not only cause the loss aforesaid to your petitioners and hamper and restrain the business of your petitioners, but would also in like manner entail a loss to all others similarly situated to your petitioners, and would hamper and curtail the business of merchants located in the territory between the Atlantic Seaboard and the Mississippi River.

Your petitioners further represent that practically ever since the railroads have been constructed between the Mississippi and Missouri Rivers, such railroads have charged for the service of transporting merchandise between said rivers, the same rates to all shippers; that the service rendered by railroads in transporting merchandise between the Mississippi and the Missouri River cities, is, so far as the shippers are concerned, identical in all cases of like amounts of similar merchandise and that as regards the railroads, the service rendered in transporting merchandise for your petitioners between the said rivers, is in no case more expensive and in many cases less expensive to the carriers than the transportation of a like
238 amount of similar merchandise shipped from the Atlantic Seaboard territory aforesaid.

Your petitioners further represent that the practice of breaking rates at the Mississippi River aforesaid and charging for the transportation of merchandise between the Mississippi and Missouri Rivers the same rate to all persons shipping the same, has been maintained as aforesaid for very many years last past. That by reason and because of the said fact, the business of your petitioners and of many other parties has been established and developed; that the relation of rates and the system of rate-making which has been as aforesaid so long maintained between the Mississippi and Missouri Rivers, has entered into and has formed an important part in the commercial development of the cities in which your petitioners do business, and of the cities of the Central West; and that to change the said relation and the said system of rate making by compelling the railroads to carry between the Mississippi and Missouri Rivers merchandise when shipped from the Atlantic Seaboard territory aforesaid at a less rate than is charged for transporting a like amount of similar merchandise when shipped by your petitioners and others similarly situated, would be to seriously and harmfully disturb the commercial conditions under which the business of the Central West has been built up and upon which it is now conducted.

239 Your petitioners further represent that inasmuch as the service rendered by the railroads in the transportation of merchandise between the Mississippi and Missouri Rivers is the same to shippers whether the shipments originate at the Atlantic Seaboard or west thereof, and inasmuch as the service of transporting merchandise between the said rivers is in all cases as expensive to the carrier and in many instances more expensive to the carrier when the merchandise is shipped from the Atlantic Seaboard than when a like amount of merchandise is shipped by the petitioners herein, and inasmuch as the relation of rates aforesaid which has been maintained for so many years has had and does now have an important effect upon the commercial development of the cities of the Central West, and inasmuch as the enforcement of the order of the Interstate Commerce Commission referred to in the bill herein would seriously disturb the commercial conditions aforesaid, the preference and advantage involved in the enforcement of the order of the Interstate Commerce Commission aforesaid, and by said order given to the persons shipping merchandise from the Atlantic Seaboard territory aforesaid, is undue and unjust and unlawful.

240 Your petitioners further represent that the enforcement of the order of the Interstate Commerce Commission aforesaid, would necessarily give to persons shipping merchandise from the Atlantic Seaboard Territory aforesaid, an undue and unlawful preference and advantage over your petitioners and all other shippers located between the Atlantic Seaboard Territory and the Mississippi River in the matter of the rates for transportation fixed by said order, and that said undue and illegal advantage in such freight rates is an unlawful, unjust and undue discrimination against your petitioners and others similarly situated, and in favor of merchants shipping merchandise from the Atlantic Seaboard Territory aforesaid.

Your petitioners further represent that they will and they do hereby adopt the testimony already introduced herein upon the part of the complainants and the railroad companies, intervenors, and that they do not and will not ask any extension of time within which to offer testimony in this cause.

Your petitioners hereby adopt in this behalf, the allegations of the original bill of complaint herein, and pray that they may be so taken by this Honorable Court.

Your petitioners further represent that they are desirous of being made parties in the above entitled cause and to appear and to assist at the hearing hereof as co-complainants and these petitioners hereby offer, upon being allowed to come in as such co-complainants herein, to contribute their share of the costs of such proceedings.

Wherefore, your petitioners pray that by an order of this court, your petitioners may be allowed to come into this cause as parties and be made parties complainant in said cause with the original complainants upon the payment of their share of the expense of such suit. And your petitioners further pray as the original complainants have originally and duly prayed in the original bill of complaint herein.

241 And your petitioners further pray for such other and further relief in the premises as justice and equity may require, and to your Honors shall seem meet.

And your orators will ever pray, etc.

A. J. LINDEMANN AND HOVEISON COMPANY,
ROBERTS, JOHNSON AND RAND SHOE COMPANY,
WHITELAW BROTHERS,
THE SIMMONS HARDWARE COMPANY,
SPRAGUE, WARNER AND COMPANY,
CARSON, PIRIE, SCOTT AND COMPANY,
KEMIWELD CAN COMPANY,
PARKE, DAVIS AND COMPANY,
SHERWIN-WILLIAMS COMPANY,
By WILLIAM D. McHUGH AND
COLIN C. H. FYFFE,

Solicitors for Said Intervening Petitioners.

WILLIAM D. McHUGH,
COLIN C. H. FYFFE,

Of Counsel.

242 & 243 UNITED STATES OF AMERICA,
State of Illinois, Northern Division, vs:

Colin C. H. Fyffe, being first duly sworn, on oath deposes and says that he is the agent in this behalf of the petitioners named and described in the foregoing petition to which this affidavit is attached; that he is authorized to sign said petition on behalf of said petitioners; that he has read the said petition and knows the statements

therein and that the same are true, to the best of this affiant's knowledge and belief.

COLIN C. H. FYFFE.

Subscribed and sworn to before me this 19th day of April, A. D. 1909.

[NOTARIAL SEAL.]

CORNELIUS LYNDE,
Notary Public.

(Endorsed:) Filed April 20, 1909. H. S. Stoddard, Clerk.

244 And afterwards to-wit: on the 23rd day of June, 1909, there was filed in the clerk's office of said court in said entitled cause, certain evidence taken before J. L. Bennett, Special Examiner, to whom said cause had been referred to take evidence and report the same to the court, said Special Examiner's report and Exhibits is in the words and figures following to-wit:

245 EVIDENCE TAKEN BEFORE SPECIAL EXAMINER.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

In Equity. No. 29247.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.
vs.

THE INTERSTATE COMMERCE COMMISSION.

Evidence Heard Before J. L. Bennett, Special Examiner Appointed by Order of said Court Entered Herein on the 1st Day of December, 1908.

The parties met before the Special Examiner at the office of Colin C. H. Fyffe, in the New York Life Building, in the City of Chicago, County of Cook and State of Illinois, on the 13th day of January, 1909, at the hour of eleven o'clock, A. M.

Present for the complainant, Mr. Colin C. H. Fyffe and Mr. William D. McHugh. And for the defendant, the Interstate Commerce Commission, Mr. Luther M. Walter. And for certain intervening petitioners, Mr. John H. Atwood and Mr. John L. Webster.

246 It was stipulated by and between the parties that objections made by any of the solicitors for the intervening petitioners or the defendant, should be considered as made by all of such intervening petitioners and the defendant.

It was also stipulated that the signatures of witnesses to their depositions are waived.

HENRY EICKE, a witness produced on behalf of the complainants, was duly sworn and deposed as follows:

Direct examination.

By Mr. FYFFE:

Q. What is your name?

A. Henry Eicke.

Q. Where do you live?

A. Chicago.

Q. What is your employment?

A. Local Freight Agent for the Wabash Railroad Company.

Q. How long have you had that position?

A. Since 1894.

Q. Had you had any railroad experience before that time?

A. About ten years.

Q. In Chicago?

A. In Chicago, yes, sir.

Q. Connected with the same road?

A. Yes, sir.

Q. What are your general duties as Local Freight Agent of the Wabash?

A. To supervise the receiving and forwarding of freight.

247 Q. You are Local Freight Agent at Chicago?

A. Yes, sir.

Q. And the supervising of the receiving and forwarding of freight that you do is with reference to it at Chicago?

A. Yes, sir.

Q. Does your road receive freight from eastern railroad connections?

A. We do.

Q. That is for the purpose of shipping the same on your road west?

A. Yes, sir.

Q. Do you also receive freight from local consignors?

A. We do.

Q. In these last cases they are cases where the shipment originates in Chicago?

A. Yes, sir.

Q. Does any portion of the freight that you receive from eastern roads assigned to your road for shipment west come by what is called L. C. L., less than car loads.

A. Yes, sir.

Q. Will you explain what L. C. L. as used by railroad men means?

A. L. C. L. stands for less than car load shipments. Any shipment less than a car load is called an L. C. L. shipment.

Q. In a car loaded with L. C. L. shipments there might be several different shipments, might there not?

A. Yes, sir.

248 Q. Consigned to entirely different consignees?

A. Yes, sir, and destinations.

Q. And from different consignors?

A. Yes, sir.

Q. How do you receive freight of this character from your eastern connections, will you state the process.

Mr. WALTER: The defendant, the Interstate Commerce Commission objects to any testimony from this witness as to what transpires at Chicago in regard to the receipt and forwarding of freight to the west received from eastern connections on the ground that it is incompetent, immaterial, and irrelevant, under the pleadings in this case, and further on the ground that there is no showing that this evidence is newly discovered or could not have been presented to the Interstate Commerce Commission in the hearing before it. This objection applies to the entire testimony of this witness.

Mr. ATWOOD: The intervening defendants object to the introduction of testimony under the pleadings, the bill and answer and the intervening petitions, they not disclosing such a situation as would entitle the United States Circuit Court of the Seventh Circuit to receive, accept or consider any testimony as to anything not transpiring in the Interstate Commerce Commission, and unless it appears otherwise it will be understood that any objections made by either the principal defendant, the Interstate Commerce commission, or by the intervening petitioners headed by the Burnham, Hanna, Munger Dry Goods Company, will be considered as objections made for all of said intervening petitioners and the defendant.

It was agreed and stipulated as heretofore stated that all objections made by defendants or intervening petitioners shall be treated as applying to all such intervening petitioners and defendants, and that the objections made heretofore may apply to all the questions to all the witnesses in the case, on behalf of complainants.

A. In two ways, by car or by team.

Mr. FYFFE:

Q. In which of these two ways do you receive the bulk of freight of this character from your eastern connections?

A. About 75 per cent by car and about 25 per cent by team.

Q. Directing your attention to the freight of this sort received by car will you take the case of receiving freight from any one of your eastern connections and state the process by which freight of this character is handled by your lines.

Mr. WALTER: There is one specific objection and that is that anything that occurs at Chicago which affects the cost of service performed by the carriers in Chicago has nothing to do with the issues in this case it being a service impressed by the rate from the seaboard to the Mississippi River, and having nothing to do with the rates between the Mississippi River and the Missouri River cities.

A. For instance a car coming from the Lake Shore & Michigan Southern the car is delivered to us by the Lake Shore & Michigan Southern in our 47th street yard. After delivery the car has to be carded to our out-freight house, and has then to be taken from our

47th street yard with our own power to our out-freight house a distance of about four miles.

Mr. FYFFE: Is there any service rendered by your line in connection with the car on its receipt at your receiving yard, such as inspection?

A. The car is inspected. It is carded, and as I have before stated is forwarded from the 47th street yard, to the out-freight house.

Q. By whom is it forwarded or moved from the 47th street yard to the out-freight house?

A. By the Wabash Road.

Q. It supplies the motive power for that?

A. Yes, sir.

Q. Makes up the train?

A. Yes, sir.

Q. What is done with a car of this kind when received at your out-freight house?

A. The freight is unloaded and then is reloaded into cars which will take the freight to destination or in the direction of destination.

251 Q. Where is that out freight house?

A. The out freight house is located on Clark street between Polk and Taylor streets.

Q. What is done with the freight taken out of the car so received at your out freight house, what occurs to it I mean between the received car and your out-going car?

A. It has to be unloaded and then has to be reloaded into cars which will take the freight to destination or in the direction of destination.

Q. By whom is that work of loading and unloading done?

A. That is done by Wabash employes.

Q. Does your railroad receive freight from local shippers also?

A. Yes, sir.

Q. That is the case of shipments originating here in Chicago?

A. Yes, sir.

Q. How is that freight received by you?

A. About 70 to 75 per cent of it comes to us by team.

Q. Where do the teams bring the freight?

A. To our out freight house.

Q. Is that the same freight house which you have been speaking about?

A. Yes, sir, the one on Clark between Polk and Taylor street.

Q. Describe what process the handling of the freight so received goes through?

A. When the team arrives the wagon is backed up to the
252 door, the teamster shifts the freight to the tail end of the wagon and assists to place it there on the truck and then a Wabash employe takes the freight truck to the car which will take the shipment to destination or in the direction of destination.

Q. And the Wabash employe loads that car?

A. Yes, sir.

Q. Who is the teamster in the supposed case acting for and paid by?

A. He is acting for and is paid by the shipper.

Q. Not by the railroad company at all?

A. No, sir.

Q. As between those two modes of handling your west going freight between the freight received from connecting eastern lines and freight received from a local shipper, where the shipment originates in Chicago, which is the more or less expensive?

Mr. WEBSTER: The Burnham, Hanna, Munger Dry Goods Company, intervenors, object to this question for the reason that it calls for the statement of a conclusion based upon facts which are not stated. A further objection is made by the same intervenors that the conditions that transpire with regard to the Wabash Company can have no bearing upon the propositions involved in this case because they are not complainant nor intervenors seeking any relief or redress from the court, and there is nothing to indicate identity of situation between the Wabash and such complainant or complaining intervenors.

A. Freight received by car costs considerable more to handle than freight which is received by them.

Mr. FYFFE:

Q. Will you state approximately what the difference in expense is. I do not mean in detail.

A. Approximately 40 per cent.

Q. That is to say—

A. The freight delivered by car costs 40 per cent more to handle than freight delivered by team.

Q. You state that some of the freight received by you from eastern connections comes by team?

A. Yes, sir.

Q. What if any difference is there in the expense of handling the freight that comes by team from the connecting lines and freight that comes by team from the local shipper?

A. There is practically no difference.

Cross-examination.

By Mr. WALKER:

Q. Where does the Wabash originate at the eastern end, between what points and Chicago from the east?

A. The Wabash proper terminates at Buffalo, the eastern terminus.

Q. Has it also a terminus at Pittsburg?

A. There is a Wabash Pittsburg terminal, not the Wabash proper, it is a separate corporation.

Q. The Wabash Railroad is what is known as a Gould property, isn't it?

A. I have heard it spoken of as a Gould property.

Q. What are the eastern connections of the Wabash upon the Atlantic seaboard?

A. The Lehigh Valley, the Delaware, Lackawanna & Western, the New, York, Ontario & Western, the Rutland and the West Shore.

Q. All of those carriers you have mentioned deliver seaboard freight of the first five classes to the Wabash for carriage on its journey west?

A. Yes, sir.

Q. The Wabash comes into Chicago?

A. It does.

Q. Does it also reach the Missouri River cities, Kansas City and Omaha?

A. It does.

Q. Where does it cross the Mississippi River?

A. At St. Louis and Hannibal.

Q. Is there or not a direct line through Hannibal to Kansas City and Omaha without going through St. Louis?

A. We have a direct line although the rails are not entirely controlled by the Wabash road. There is a strip made use of belonging to the M. K. & T. between Hannibal and the Missouri River.

Q. But you do operate a through line by lease or other agreement?

A. Yes, sir.

255 Q. Of the first five classes of freight coming into Chicago from the Atlantic seaboard destined to the Missouri River cities, what proportion is unloaded from the car at Chicago?

A. I am hardly prepared to answer that question.

Q. Does any of the five classes originating in the Atlantic seaboard territory bound for the Missouri River cities and carried by your line pass through Chicago?

A. No, sir. Excuse me just a moment. In order to make that question clear I presume you meant to ask freight carried to destination by the Wabash.

Q. Carried to Chicago by the Wabash and by any other carrier from Chicago on?

A. That is a different proposition entirely. I wanted to be clear on that. Yes, we unload quite considerable freight at Chicago.

Q. What proportion of the traffic carried by you from Atlantic seaboard points or your connections at Buffalo which is destined to Missouri River cities comes to Chicago?

A. Considerable.

Q. Your best judgment as to the percentage?

A. Fully a third.

Q. From what fact do you get that information?

A. From general experience in handling the business a good many years.

Q. Have you had any experience east of Chicago for the
256 Wabash?

A. I have.

Q. What points?

A. We operate east of Chicago. I handle towards the eastern end and western end from and through Chicago.

Q. Your work is entirely at Chicago, is it not?

A. Yes, sir.

Q. How do you know what freight which comes to you at Buffalo is diverted by way of Hannibal and never comes to Chicago?

A. It all depends on how the traffic is routed which way it comes. If it is routed in care of connecting lines at Chicago it comes to Chicago.

Q. You have no information have you, as to the routing of that freight?

A. I have not.

Q. All that you know is what freight you see at Chicago that is billed to connecting lines?

A. Which is unloaded at Chicago.

Q. It may be only a small percentage of the total may it not, so far as you know?

A. So far as I know.

Q. What is the cost of hauling a car of freight from the 47th street yard to your out freight house?

A. From the 47th street yard to the house costs about 50 cents a car.

Q. Did you say 75 per cent of such traffic comes by car or was it 25 per cent?

A. Seventy-five per cent.

Q. Twenty-five per cent by team?

A. Yes, sir.

257 Q. When it is hauled by team from the 47th street yard to the freight house, the out-bound freight house, who pays for that carriage by team?

A. There is no freight hauled from the 47th street yard to the out-freight house by team.

Q. What is the 25 per cent by team that you speak of?

A. I said 25 per cent of freight destined to Mississippi River points or beyond Chicago comes to us by team from connecting lines and is delivered by team at our freight house located on Clark street between Polk and Taylor streets.

Q. Who pays for that hauling by team?

A. The eastern line.

Q. Isn't it true that the eastern line also pays for the moving of this 75 per cent by car or actually moves it itself?

A. The eastern line pays for the delivery to the Wabash but it does not pay for the handling of the car beyond the point of delivery, which so far as the Lake Shore & Michigan Southern is concerned is our 47th street yard.

Q. Is there any other line which makes delivery to you at the 47th street yard?

A. Yes.

Q. What other?

A. Nickel Plate, Pittsburg, Fort Wayne & Chicago and the Pan-handle.

Q. Is there any other point of delivery by car?

A. Yes, sir.

Q. Where?

A. Landers yard.

258 Q. When cars are delivered to you at Landers yard, is there any movement by the connecting line beyond that to your freight house?

A. No, sir.

Q. All this freight that you speak of as being delivered by car is L. C. L. shipments, is it not?

A. Not all of it. If it is L. C. L. shipments it comes to the Clark Street house and if it is car load shipments they go forward in the same car.

Q. What percentage of this seaboard traffic of the first five classes destined for the Missouri River cities comes to you in car load lots?

A. I cannot answer the question off-handed.

Q. Can you give me an estimate based on your experience?

A. No, I could not even make a fair estimate. I would want to look into it before answering.

Q. When traffic is billed from the seaboard of the first five classes destined to Missouri River cities, it is carried from the point of origin to the Mississippi River on a through rate to the Mississippi River is it not?

A. Yes, sir.

Q. When traffic originates at Chicago destined to Missouri River cities, it is carried at an entirely different rate, is it not?

A. Yes, sir.

Q. What is the cost of handling shipments which come to you by team?

259 The WITNESS: Do you mean the cost of handling in the freight house?

Mr. WALTER: Yes, and putting it into the car?

A. About 40 cents a ton.

Q. How much does it cost to handle the traffic which is delivered to you by connecting lines after you get it to your Polk street house, the cost to you after it reaches the Polk street house?

A. After it reaches the Polk street house, about 40 per cent more, or about 56 cents a ton.

Q. The difference of cost to the Wabash Railroad between the handling of the freight which comes by car and is destined to the Missouri River cities and the cost to you of handling traffic which originates at Chicago and is destined to Missouri River cities is 16 cents, is that right?

A. The difference in cost in freight house handling, yes.

Q. And the additional cost of 50 cents for moving the car?

A. The 50 cents for moving the car back again to 47th street and returning it to the connecting line, the per diem expense on that car, the yard expense in handling the car we figure it costs about three cents a hundred weight.

Q. Where you have a car which comes to the Polk street house with freight destined to the Missouri River cities you there
260 unload it?

A. Yes, sir.

Q. And all shipments which you have for points east are loaded into that car, are they not?

A. Yes, sir.

Q. In making your calculation, have you made any allowance for the proportion of cost which the shipment destined east should bear?

A. The same proportion exactly.

Q. Then the Atlantic seaboard shipments for Missouri River cities should bear one-half of the total cost?

A. No, the difference in cost of freight coming by team and car applies to all freight whether destined east or west of Chicago, or whether destined to Missouri River points or any other point beyond Chicago.

Q. If the car is returned to the connecting line empty there is the same cost or expense to the Wabash as if it were loaded, is there not?

A. Yes, sir.

Q. Have you made any allowance for the fact that the cars may be loaded going back to the connection?

A. That is so seldom the case that it amounts to nothing if there is any allowance at all.

Q. Then in nearly every instance the car which comes from the east loaded with traffic for Missouri River cities is unloaded and returned empty?

A. Yes, sir.

Q. In what cars do you handle the traffic which you deliver to eastern connections or eastern delivery?

261 A. In Wabash cars or foreign cars, as the case may be.

Q. Where do you get those cars?

A. There are always cars available for handling traffic at all points.

Q. Are not those cars that you have received from the east and unloaded with traffic going to the west used for traffic going east?

A. That probably would be the case if we made any delivery of our freight to connecting lines by car, but all transferred freight which the Wabash handles of L. C. L. transfer is delivered to us by connecting lines by teams.

Q. Do you have an entirely different system of handling traffic going east than of handling traffic going west?

A. No, sir.

Q. Why do you deliver in one case by team and receive by car in the other?

A. Because in one case we perform the service and in the other case it is performed by connecting lines.

Q. Who performs the service for the traffic going to the east?

A. If the traffic comes from the west going east routed in care of a connecting line beyond Chicago the Wabash performs the service and pays for it of delivering that freight to its eastern connection.

Q. If it is just reversed, coming from the east and going to the west?

A. It is simply reversed. The entire proposition is reversed in the same way.

262 Q. It is paid by the carrier which brings it from the east and delivers it to you?

A. The carrier that brings the freight into Chicago for forwarding beyond pays the bill.

Q. That is for traffic going to Missouri River cities?

A. Yes, sir.

Q. Have you any data available which shows the total of seaboard freight of the first five classes which was handled by you and delivered to a connecting line at Chicago for transportation to Missouri River cities?

A. No I have not here.

Q. That data is easily procurable, is it not?

A. Not very easily. It takes considerable of labor to procure it.

Q. Isn't it true that cars are interchanged freely between the eastern connections and the western connections at Chicago?

A. It is.

Q. There is a contract or agreement between all the roads practically which enter Chicago either from the east or the west whereby cars are interchanged at a payment of 50 cents per diem for the use of the car?

A. No, the per diem is 25 cents at present.

Q. You are not able to state whether the Wabash has a balance for or against it in the use of freight cars of connecting lines as compared with its own cars?

A. I am not able to state that from personal knowledge.

263 Q. Do you know what the average time is in taking a car from the 47th street yard to your Polk street house and unloading it?

A. Cars which are received during the evening or during the night hours are rehandled at the Polk street house the following morning.

Q. And returned the same day?

A. Yes, sir.

Q. The per diem for the use of that car would be 25 cents?

A. Well, no, on an average a car to be received placed in the house unloaded and returned to connecting lines consumes about two days' time.

Q. Now, haven't you just said that if it is received at your 47th street yard during the night or the evening it will be unloaded at the Polk street house the next morning and returned the same day?

A. Yes, but in accordance with experience, it requires two days' time to unload a car because the per diem divides at midnight. If we receive a car at 11 P. M. we become responsible for the per diem at 12 o'clock midnight. If we do not get the car back into the hands of the connecting line until one o'clock, A. M. the following morning we are responsible for the entire per diem of the following day, notwithstanding that the car was only in our possession 26 hours actual time we are responsible for 48 hours per diem.

Q. It is only four miles from the 47th street yard to your Polk street house?

A. About that, yes.

264 Q. And the unloading of that car and returning it ordinarily can be done within twelve hours after it is received, can it not?

A. Yes.

Q. You know nothing as to the cost of handling cars carrying traffic of the sort we have under consideration here, namely Atlantic seaboard traffic of the first five classes to the Missouri River cities and to other carriers of Chicago, you speak only of the Wabash?

A. That is all.

Q. Is there any difference in the cost of the service performed by the Wabash at Chicago in the handling of that traffic which is destined to the Missouri River cities and traffic which is destined to Oklahoma common points, Texas common points, transcontinental business or business to other points?

A. There is not.

Cross-examination on behalf of Burnham, Hanna, Munger Dry Goods Company et al. by JOHN L. WEBSTER:

Q. On Atlantic seaboard business received by the Wabash lines at its eastern termini such shipments are carried by the Wabash Railroad, not through the City of Chicago, but crossing the Mississippi River at Hannibal or St. Louis if the goods are to be carried by the Wabash to the point of destination.

A. That is correct.

265 Q. So as to all such Atlantic seaboard business received by the Wabash Road at its eastern termini has to be carried by the Wabash road to Missouri River cities, the merchandise does not go through the city of Chicago, and this expense you have talked about in the city of Chicago has no application thereto?

A. Not to such shipments.

Q. If the Wabash road receives a consignment of Atlantic seaboard business at its eastern termini to be delivered to other roads in Chicago and not carried to its destination by the Wabash Company, then the Wabash Company delivers such merchandise to other connecting lines in the city of Chicago?

A. Yes, sir.

Q. In that instance the Wabash Company then does not incur the expense of reloading that merchandise in its cars at the stations which you have referred to?

A. No, sir.

Q. But that expense is borne by the other company carrying the goods to the point of destination?

A. That is correct.

Q. Then the fact is that the Wabash Road is at no extra expense relating to Atlantic seaboard business in the City of Chicago when the Wabash road carries such merchandise to the point of destination or when it receives it at its eastern termini and delivers it over to other carriers in the city of Chicago, but that extra expense when it is delivered to other carriers is borne by them, if any
266 there be?

A. The Wabash road in that case assumes the expense of making delivery of such shipment to its connection.

Q. That is true no matter whether the goods go to Missouri river points or any other points?

A. Entirely so.

Q. So that the mere fact that goods are carried to Missouri River points has nothing whatever to do with that expense of delivery over to the other carrier?

A. The Wabash road incurs that expense on all freight no matter where it is destined to.

Q. So that the Wabash road is at no extra expense because the goods are delivered to Missouri River cities?

A. Not at all.

Q. If you received goods at your eastern termini or received them in Chicago to be delivered to a Mississippi River point, for instance St. Louis, which never go beyond St. Louis and never go beyond the Mississippi River, you incur just this expense which you have described?

A. Yes, sir.

Q. Then the fact is that no additional expense is made at all by reason of the single fact that the goods pass between the Mississippi and the Missouri river?

A. The destination of the shipment has no bearing on the expense. It is only the question of the mode of receiving it, by car or by team.

Q. You do not have any books, do you, or records which —
267 the number of cars which come to your company from the Atlantic seaboard that are in car load lots?

A. Yes, our records show that.

Q. Are those records accessible?

A. That is car load freight which comes to Chicago?

Q. That freight which comes to Chicago in car load lots then you deliver over to another road in the car load lots, do you?

A. Yes, sir.

Q. As to that merchandise, there is no rehandling at all? Simply the delivery of the car?

A. That is all.

Q. If it comes in car load lots and to be carried by your road to the point of destination, it does not come through Chicago in the first instance and consequently that car load is not rehandled, it is not unloaded and reloaded again?

A. No, sir.

Q. Then this expense you have talked about, if any there be, applying to any shipment whatsoever to any point of destination applies only to the case where merchandise comes to you in a car but partly loaded?

A. L. C. L. lots.

Q. Less than car load lots?

A. Yes, sir.

Q. It applies to that only?

A. That is all.

Q. Will you be kind enough to show us any record, produce any record that will point out to us if any there be of freight less than

268 car load lots that the Wabash road has received during any one of the last five preceding years at its eastern terminus and reloaded and underwent this additional expense if any, in the city of Chicago, where your road carried the merchandise to the Missouri River cities or where your road delivered it over to any other company to be carried to the Missouri River cities?

A. There are thousands upon thousands of records showing that we delivered such freight here to our connecting lines. There is a great big bunch of them every day.

Q. In such cases have you not testified that there would be no extra expense borne by the Wabash Company?

A. If we make delivery to connecting lines we certainly assume the expense of making the delivery.

Q. But the extra expense you talked about was regarding freight by the car, and in such cases you do not reload that freight into another car do you?

A. That was freight which came to us from connecting lines to be forwarded by the Wabash.

Q. That is not what I ask you. You are getting away from what I ask you by putting in a condition which I did not state at all. I did not ask you about freight which was delivered to your company in Chicago from connecting lines, but I asked you about freight which your company received at your eastern terminus in less than
269 car load lots and your company either carried it to the point of destination, Missouri River cities, or your company delivered it to another carrier in Chicago, in such case do you mean to say that you have any record showing that your company went to the expense of reloading that freight and isn't it true upon the other hand that you do not reload that freight and do not incur any such extra expense?

A. In isolated cases freight which originates at eastern termini destined to Missouri River points which goes to destination by the Wabash travels via Chicago, and in such isolated cases we assume precisely the same expense in handling that freight as we would if that same shipment had been delivered to us by a connecting line.

Q. Why do you put in your answer the word isolated and endeavor to select a supposed isolated case?

A. Because as a general proposition, freight which goes to destination via the Wabash which has originated in eastern points does not travel via Chicago.

Q. So then, your isolated case would have no application to that?

A. No.

Q. Then your isolated case would have no application in any instance to any freight would be, received by your Company at its eastern termini and carried by your company to the point of destination?

A. There is no extra freight house expense there.

Q. Now, this extra expense that you talked about therefore,
270 can only apply to a case where you receive the freight in Chicago and then to a case where you receive it in less than car load lots?

A. From connecting lines exactly.

Q. That is the only instance where it could apply?

A. Exactly.

Q. Then that would apply even though the goods stopped at the Mississippi River?

A. The same. The destination has no bearing on it.

Q. The mere fact that it went to Omaha, Kansas City or St. Joseph has nothing to do with it?

A. No, sir.

Q. That fact is not the fact which creates that expense?

A. No, sir.

Q. If there is such expense as these isolated cases of less than car load lots to fall within your former answer it would apply to the case of goods which went to St. Louis and stopped there, or to a case of goods which may have gone to San Francisco or to Texas common points, Oklahoma or anywhere else?

A. I have stated that several times.

Cross-examination.

By Mr. ATWOOD:

Q. As I understand it your eastern terminus is Buffalo?

A. Yes, sir.

Q. Your road runs in a fairly straight line a little to the southwest, approximately southwest to Hannibal?

271 A. Yes, sir.

Q. And then perhaps continues a little more westerly than south to Kansas City?

A. Yes, sir.

Q. At what point between Buffalo and Hannibal is it that the portion of your road that comes to Chicago branches off?

A. At Detroit.

Q. At Brunswick in Missouri, the branch that goes to Omaha branches off from what we might call the main line between Buffalo and Kansas City?

A. Yes, sir.

Q. So that in the ordinary operation of your railroad business if stuff was consigned to you at Buffalo for delivery at Kansas City or Omaha, the route pursued would be along the tracks of your main line straight down to Kansas City through Hannibal, through Brunswick and through Detroit?

A. Either via Hannibal or via St. Louis.

Q. It would be out of the way to go to St. Louis wouldn't it?

A. It is done quite frequently in the interest of time.

Q. Just confine the answer to the question that is propounded.

Mr. McHUGH: I think he has.

Mr. ATWOOD: I asked him if that would not be out of the way. Hannibal is several miles north of St. Louis isn't it?

A. Yes, sir.

272 Q. Hannibal is pretty nearly midway on a straight line approximately between Kansas City and Buffalo, isn't it?

A. Yes, sir.

Q. Now if carried upon your lines alone a delivery destined for Kansas City and having its origin in Buffalo would pursue the course that I have suggested, it would go from Buffalo to Detroit and on to Hannibal and then on to Kansas City?

A. Yes, sir.

Q. That would be the most direct route?

A. Exactly.

Q. In order to have it go to St. Louis when destined for Kansas City it would have to go down to the south from Hannibal off from the more direct line between Buffalo and Kansas City, would it not?

A. The Hannibal and the St. Louis branches diverge at Decatur, Illinois. The Hannibal branch is from Decatur west.

Q. How many more miles would have to be traveled by a car going to Kansas City on your line via St. Louis than as though it went on your line to Kansas City direct through Hannibal?

A. I am unable to answer the question.

Q. It is considerably more?

A. Not a great deal more, no. It might be fifty miles more.

Q. There are certain expenses at St. Louis, such as bridge charges and the like, that are not incident to transportation when going through Hannibal?

A. There is bridge expense at Hannibal also, so far as I know.

Q. Who owns the bridge at Hannibal over which you pass?

Objected to by Mr. McHugh, as not proper cross-examination.

A. I cannot shed any light on that. I do not know.

Q. Why did you say a minute ago that you thought there were bridge charges there?

A. I know there is a bridge there and I know there is also a bridge charge. I do not know to whom the charge is paid.

Q. Do you know whether there is a difference between the expense incident to St. Louis and to Hannibal.

A. I could not say.

Q. But the more direct line to be pursued would be through Hannibal?

A. Exactly.

Recess to 2 P. M.

274

TWO O'CLOCK P. M.

FRANK L. JOHNSON, a witness produced, sworn and examined on behalf of the complainants, deposed as follows:

Direct examination.

By Mr. FYFFE:

Q. What is your name?

A. Frank L. Johnson.

Q. Where do you live?

A. I reside at LaGrange, Illinois.

Q. That is in Cook County?

A. Yes, sir.

Q. What is your business?

A. Superintendent of the Chicago division of the C. B. & Q. Railroad Company.

Q. That is the Chicago, Burlington & Quincy Railroad?

A. Yes, sir.

Q. What are your duties so far as concerns the handling of freight going through Chicago or freight arising from local shipments?

A. At the present time my business is to see that the cars get to the house and that the agent handles them promptly.

Q. What cars are you speaking of?

A. Any cars that contain merchandise for handling at Chicago.

Q. Does that include shipments of merchandise which comes from eastern points and are transferred at Chicago?

A. Yes, sir.

Q. To your road?

A. Yes.

275 Q. Or which your road carries to various destinations in the west?

A. Yes, sir.

Q. The order which is complained of in the bill in this case covers classes 1, 2, 3, 4, and 5, of the western classification. Do your duties lead you to have anything to do with the transfer of merchandise or goods which come within those five classes?

A. Not directly at the present time. They did for several years while I was local freight agent.

Q. When did you cease to be local freight agent?

A. May, 1906.

Q. Are you familiar with the methods which have obtained since in the movement of freight?

A. Yes, sir.

Objection was made on behalf of all the intervening petitioners and the defendant, to any testimony from this witness as to what transpires at Chicago in regard to the receipt or forwarding of freight to the west, received from eastern connections, on the ground that it is incompetent, immaterial, and irrelevant under the pleadings in this case. And further on the ground that there is no showing that this evidence is newly discovered or could not have been presented to the Interstate Commerce Commission in the hearing before it.

276 Objection is further made to the introduction of any testimony under the pleadings, the bill and answer and the intervening petitions, they not disclosing such a situation as would entitle the United States Circuit Court of the Seventh Circuit to receive, accept or consider any testimony not transpiring in the Interstate Commerce Commission,

Also that anything that occurs at Chicago which affects the cost of the service performed by the carriers in Chicago has nothing to do with the issues in this case, it being a service impressed by the rate from the seaboard up to the Mississippi River, having nothing

to do with the rate between the Mississippi River and the Missouri River cities. And it was agreed and stipulated that this objection should apply to all the testimony of this witness.

Q. Does your line, the Chicago, Burlington & Quincy Railroad receive freight of these parties from Eastern Railroad connections for trans-shipment at Chicago, to be carried by your line westward?

A. We do.

Q. Will you state the method in which freight of that character coming in that way, and applying to those classes is received here by your road as transferred from eastern lines?

A. Some of it is received by team, and other by car.

277 Q. You are speaking now entirely of transferred freight are you not?

A. That is what I understood you to ask, was freight received from connecting lines destined west by C. B. & Q. railroad. That is received from eastern lines.

Q. Could you state about the proportions between teams and that received in cars of this freight so received?

A. I cannot give you the exact figures right now, but the general average will run about 35 per cent by team and about 65 per cent by car.

Q. When the goods are received by car, will you state the mode in which the transfer to your line from the delivering line is effected? Just describe it generally.

A. Generally the cars are delivered in our Western Avenue yard which is about four miles from our transfer house. Some of them are delivered in our Hawthorn yard which is eight miles from the transfer house. After the cars have been inspected, carded, they are switched out of the train and later switched to the freight house.

Q. Where is the freight house?

A. It is located at Canal and Harrison street.

Q. That is what you call your out-freight house?

A. That is out out-freight and transfer house.

Q. State what is done with the cars and their contents when received there?

A. The cars are set where they can be reached by the
278 freight handlers, the freight is unloaded from the cars and distributed into a set of about 130 cars loading west.

Q. Where is the car that comes to you in this way and is hauled by you to your freight house, made up, as to its contents, and by whom?

The WITNESS: That is where is the loading done?

Mr. FYFFE: Yes, sir.

A. Some of these cars come to us from New York loaded direct to the C. B. & Q. Others come from Boston. Occasionally we get cars from Philadelphia loaded direct. Other cars are made up at the transfer houses on the eastern lines.

Q. Are you familiar with the mode in which the transfer business of the eastern lines is effected?

A. Fairly so.

Q. Is it not true that the cars are broken in bulk at these transfer yards of the eastern lines near Chicago in a great many instances?

A. Many of them are.

Q. State what is the occasion for that?

A. It is due to the fact that the cars come to Chicago containing freight for various western lines, and it is necessary in order to get the freight to the line to which it is consigned to handle it at the eastern transfer house in order to make a separation. For
279 example, a car will arrive at the Lake Shore transfer house at Englewood, loaded at some eastern point, containing freight for the C. B. & Q., C. & N. W., C. R. I. & P. and in fact for every western line. It is necessary to handle that freight at their transfer house in order to make the proper deliveries.

Q. That loading then at the eastern roads transfer yard or transfer house is done by the employes of the eastern road?

A. Yes, sir.

Q. Do they sort out the freight that is put into the car, for instance the Burlington road, with reference to the destination of the freight on your line?

A. They do not. Let me ask, do you mean to say do they keep each lot for a particular destination together?

Q. No, I mean do they sort out in such way that you have all the different shipments for St. Paul or Minneapolis together, and those for Omaha together?

A. No, sir.

Q. Where do the expenses of your line in this handling begin in the receiving of cars from the eastern lines?

Mr. WALTER: The defendant objects to any testimony as to the expense of handling traffic in Chicago.

A. It begins as soon as we commence to card the car in our outer yard.

Q. What are all the operations that you can remember that takes place with reference to the car while in the yard?

280 A. The first operation is that the car clerk must examine the billing to determine to what point the car is to be moved. The next operation is to card it so that the switchman may know where to switch it to. The next operation is to have the physical inspection of the car for safety and to protect us against what we call defect cards under Master Car Builder rules. The next expense comes in switching the car out and taking it to the freight house. Then the expense of handling the freight at the freight house. The next expense is in taking the empty away from the freight house and returning it to the owner line. In the meantime we are paying per diem on the car as long as it is in our possession.

Q. Where do you return the car to? Do you return it to your own transfer yard from whence it came, or to the yard of the other road?

A. We drag these empties, as we call them, from the freight house to our Western Avenue yard. There they are switched in trains and delivered to the line from which we received them.

Q. They go by the name of empties do they?

A. Yes, sir.

Q. The freight that is received in this way comes by what you call less than car loads does it not?

A. Yes, sir.

281 Q. Is any freight of this character in these five classes received by you from eastern lines in other cars of which the bulk of the contents are not broken in handling to Chicago but the car itself goes through Chicago from the eastern line or on to your line and so on to its destination?

A. A few.

Q. Could you give any statement of the proportion of cars that go through in that way as against cars of merchandise which come to you in which the bulk is broken up and distributed as you have described?

A. Your question refers to the same class of freight moved directly through Chicago?

Q. Yes, sir, the same class in these five classes entirely.

A. It is so small that it is hardly conceivable.

Q. That is the amount of freight that comes in the through car of this character?

A. That is not re-handled in Chicago. I should say that an outside figure would be two to three per cent.

Q. The phrase, less than a car load, refers to a rate does it not, and not to the amount of the contents of the car?

A. No, it depends altogether on whether you are talking about rates or freight. We speak of L. C. L. freight and we speak of L. C. L. rate or class rates. By L. C. L. freight we mean shipments less than a car load, and taking less than car load rates. By

282 car load freight we mean freight cars of any commodity such as coal, lumber, pig iron, steel, and so forth, where the entire shipment is from one consignor to one consignee at one destination.

Q. On the other hand the less than car load shipment is made by very many consignors to many consignees, is that not so.

A. At many destinations.

Q. But it does not mean that the car as a whole is not well filled in relation to its capacity.

A. No, sir.

Q. It only refers to the amount of the single shipments.

A. Yes, it merely designates the class of business.

Q. Does your railroad, the Chicago, Burlington & Quincy Railroad, carry also freight of this character, meaning merchandise of these five classes received from local shippers in Chicago?

A. Yes, sir.

Q. At your out-freight house?

A. Yes, sir.

Q. How is that brought to your out-freight house?

A. By team largely.

Q. Is the bulk of it brought by team?

A. Yes, sir.

Q. Will you state the operation by which that freight which is

brought to you in that way from local Chicago shippers is handled by you so as to get it into your out-going trains?

A. The teamster gathers that freight at the back end of his wagon on to a warehouse truck in the hands of what we term a
283 caller or scaler who takes his truck on to the scale, weighs the freight and calls the weight and marks to the check clerk, and on the instructions of this check clerk marks the freight for correct loading. The truck is then taken by the freight handler direct to the car.

Q. How is the merchandise of this character handled that is brought in by cars from your eastern connections?

A. The caller and his check clerk get into the car, load the freight on trucks and it is taken from the cars into the various cars loading on.

Q. Of these two handlings, the handling of the freight of this character received from eastern connections by car and the handling of freight received from the local shipper by team, which is the more expensive to the railroad company?

A. Records which I have had kept just recently show that the expense on the freight received by car is slightly in excess of that received by team. That is the freight house expense.

Q. I am speaking now of the freight house expense entirely. Could you state what elements, I do not mean the exact amount of expense, but what elements are there that make, or what reasons are there that make the handling of the freight received by car more expensive than the handling of the freight received by team.

A. The fact that the cars are considerably larger than
284 drays, hence the freight is considerably more mixed than it is when it comes to us by dray, that it is dark in the cars as against good sunlight on the team side, and the fact that we are compelled to floor some transfer freight due to the fact that it is so badly mixed that we cannot determine when we strike the first of a big load when we are going to get the last of it, and to avoid splitting the shipment for destination we have to wait until we are sure that we can load it all into one car. That obtains at the large stations where we load several cars a day.

Q. Who pays the employes, the teamster who has charge of the dray from the local shipper?

A. The shipper.

Q. The teamster, is it part of his duties to give any assistance in the handling of the freight?

A. He brings it to the back end of the dray and puts it on the truck, that is assists in doing so.

Q. You state that you receive some of the freight of this character that comes to you from eastern connections by team?

A. Yes, sir.

Q. Is the handling of freight that comes to you by team from the eastern connections different in any respect from the handling of freight of this character which comes to you from local shippers?

A. Not so far as the freight house is concerned.

Q. The handling is identical in the two cases is, it?

285

A. Yes, sir.

Q. Is there any difference in the assortment of the freight, as to whether it comes from a local shipper or from a railroad?

The WITNESS: Do you mean——

Mr. FYFFE: Would it be arranged in an easier method in one case than the other for trans-shipment for the purpose of handling it through the freight house?

A. I think the freight that comes to us from connections by team is usually lotted up perhaps better than that which comes to us from some of the wholesale houses. That is particularly true perhaps of the hardware and grocery houses.

Q. In general there isn't any difference between the freight that comes to you by team, whether it comes from a railroad or from a local shipper?

A. Practically none I should say.

Cross-examination.

By Mr. WALTER:

Q. How long were you local agent here, local freight agent?

A. Something over five years.

Q. Since May, 1906, you have been superintendent of the Chicago division?

A. No, sir, from May, 1906, until April 1, 1908, I was station inspector.

286 Q. Since then?

A. I have been superintendent of the Chicago division.

Q. As station inspector what were your duties?

A. To look after the handling of freight, office work, station facilities.

Q. The Chicago, Burlington & Quincy operates nowhere to the east of Chicago does it?

A. No, sir.

Q. You receive your freight which originates at Atlantic seaboard points from what lines chiefly?

A. Michigan Central, Lake Shore, Pennsylvania, Erie, Nickel Plate. They are the heavy lines. We receive from the Grand Trunk and we receive more or less from all eastern lines, in fact from all connections.

Q. That freight of the first five classes from all eastern connections, the delivery is made of the greater part of it to the 5th avenue yard?

A. At our Western Avenue yard.

Q. Western Avenue yard?

A. Yes, sir.

Q. Who hauls the car to you?

A. The delivering line.

Q. Does the Belt Railway have anything to do with that delivery to you?

A. We get some from the Belt Railway at Hawthorne.

Q. Who pays for the delivery to you of these cars?

The WITNESS: By the Belt Railway?

Mr. WALTER: Yes.

A. The delivering line.

287 Q. Who pays for the delivery to you of the cars which are delivered by the eastern lines?

The WITNESS: Into our yard?

Mr. WALTER: Yes.

A. They do.

Q. So that you have no expense so far as any freight is concerned prior to the time you receive it either at your Hawthorne yard or your Western Avenue yard?

A. No, sir.

Q. All this freight which you receive from seaboard territory of the first five classes which goes beyond the Mississippi River is carried on a single through rate up to the river isn't it? plus the rate beyond?

A. Yes, sir.

Q. All rates on these first five classes are the same whether in car load quantities or less than car load quantities, are they not?

A. No, I think not.

Mr. McHUGH: We will have a rate man on. We did not ask him about rates.

A. Rates are a little bit out of my line. I happen to know that there are exceptions to that.

Mr. WALTER:

Q. When a car is received by you, for example, at the Western Avenue yard, who hauls it to your out-bound freight house?

A. We do.

288 Q. Do you receive any pay for that service from the eastern line or from anybody else?

A. We do not, outside of our proportion of the rate.

Q. That proportion of the rate covers all the services you perform, does it not, that is the only pay you get for what you do?

A. It is the only revenue that we get.

Q. You say of the first five classes which come from the east to you at Chicago 65 per cent is delivered to you at your yards by the eastern connections or some railroad for them?

A. Yes.

Q. That the remaining portion, 35 per cent, is hauled to you by teams?

A. Yes, sir.

Q. You do not have anything to do with paying that team transfer do you?

A. We do not.

Q. The out-bound house is the freight house from which all freight which goes west of Chicago is handled, is that right?

A. Yes, sir.

Q. In handling this traffic from the time you receive it every ex-

pense which applies to seaboard shipments to the Missouri river cities applies alike and the same amount and to the same degree to shipments originating here in Chicago and applies to all traffic going to any point beyond Chicago does it not, without regard to destination?

A. Yes. The only way we can figure is on the average cost per ton.

Q. What do you mean by that?

289

A. That we handle so many tons of freight today and it costs so much to handle it and a division gives you the average cost per ton for the day's work.

Q. The same expense applies to each ton without regard to where it originates or where it goes?

A. We have to so figure, yes. Of course one shipment will cost considerably more to handle than another, one particular shipment, owing to its weight and bulk and the distance which you have to truck it, etc., but we cannot make a division as between this shipment and that one, we do not attempt to at least.

Q. You do not attempt to segregate the classes even do you?

A. No, sir.

Q. You take your total freight shipments and prorate the expenses according to the ton without regard to any other consideration?

A. Yes.

Q. When the yard clerk examines the billing and the car is carded when it is inspected when the freight is handled and the car is returned empty that same service is performed for every class of traffic which originates east of Chicago and which goes west of Chicago, is that right?

A. Yes, sir.

Q. Now, you speak of returning the car empty to the Western Avenue yard. If you have freight going to your eastern connection which freight came in from the west, or which originated at Chicago, don't you load that freight into these cars that came up there with eastern freight?

290 A. Not in these particular cars, because that freight is handled at an entirely different freight house.

Q. Is it true then that every car which comes in with a load from the east is returned to the connecting line empty?

A. Unless we hold that car—unless we load that car west from the same house at which we made it empty, yes, sir.

Q. Isn't it true that without regard to point of origin of the car, or whether it is a foreign or a local car you load your west bound shipment at this out-bound or transfer house into whatever cars you have available?

A. So far as the setting of the house is concerned yes, to a certain extent. That is to this extent, that if we were short of our own equipment and had lots of western line equipment we would set it into the house and load it. In fact, we load lots of equipment home every day. For instance lines that are at home at St. Louis, lines that are at home at Kansas City, Omaha, Denver, we load them rather than haul the equipment home empty.

Q. Isn't it also true that you load an eastern car that comes in

here with a lot of L. C. L. shipments and you take it up to this out-bound freight house and you fill that up and send it on west?

A. Occasionally but not usually.

Q. You give the preference to returning the car if you can
291 do it? without expense to your own service?

A. We give preference to returning the car so long as we can do so—that is so long as we have got equipment to use.

Q. The per diem charge is only 25 cents isn't it?

A. Twenty-five cents per day, yes.

Q. Isn't that much less than what the service of the car is worth?

A. Well, I could only express my own opinion.

Q. Yes.

A. There are many men of many minds on that score. My own opinion is that it is a very low rate.

Q. Isn't it the experience and the general knowledge of railroad men that that is much less by a great deal than what the car is actually worth to the railroad using it. Isn't that the consensus of opinion among well informed railroad men, as you understand it?

A. I think so. Conditions of traffic, however, would govern that largely. There would be times when a car would be worth \$10 to you if you could get your fingers on it.

Q. The average use I am speaking of in ordinary service conditions?

A. Yes.

Q. The cost of handling freight when it is received by you locally for shipment west is only the warehouse expense and the loading into the car and the switching of that car into the train?

A. Yes, sir.

Q. Now, you state that the car load shipments which went
292 through without change of bulk were only two or three per cent. Have you kept any data on that subject?

A. I have not kept any data, that is to keep actual figures. There are certain seasons of the year when there is more of that than at others. Take for instance this season this is the slack merchandise season. I doubt if there is any of it at all now.

Q. Take this kind of a car load, one which comes in from your connection, the Pennsylvania, for example, loaded with the five classes, a full car load, it is going to Missouri river cities. Would you unload that car here and put the freight in another car and send it on?

The WITNESS: Going to various Missouri River cities?

Mr. WALTER: Yes.

A. Yes, sir.

Q. If it is all going to Omaha would you?

A. If it was all destined to Omaha we would not.

Q. Where do you get the idea that it is only two or three per cent that is not unloaded here?

A. Through my knowledge of the number of through cars.

Q. Have you any account of it or is it merely a general impression?

A. Perhaps a little explanation would enlighten you on that. We

have an arrangement with one or two eastern lines whereby we load cars during the heavy merchandise season from New York to Denver—two lines I believe—and two cars a day would be a good, fair average. And we have an arrangement with one line whereby we load a freight car to St. Paul out of New York. Those are the only arrangements that we have moving via Chicago to my knowledge.

Q. When a train gets out here to the transfer point of the eastern line, say it has eight car loads of this merchandise freight, does that delivering line to you make any attempt to collect into the cars traffic destined to particular points or particular territory?

A. No, sir.

Q. Is any loading or unloading done of merchandise after it arrives at the western end of your eastern connection before you get hold of it?

A. Oh, yes, lots of it is handled at their transfer stations.

Q. When they handle it do they change it from one car to another?

A. Frequently.

Q. What do they do that for?

A. In order to get out of this car that comes into their transfer station freight that goes to the Northwestern, the Rock Island, the Chicago Great Western, the Burlington or the Milwaukee & St. Paul.

Q. Do you have much freight to handle at your transfer house which goes west over other lines than your own?

A. No, sir, the eastern connections would not send that to us.

Q. So that all that you have to do with is your own freight?

A. Yes, sir.

294 Q. Is there a concern here which makes a business of transferring freight from eastern lines to western lines?

A. There are several drayage companies.

Q. That is paid by the east or western line?

A. By the eastern or delivering line.

Q. So that you bear no expense of that. How much of this freight is handled by this concern and delivered to you?

A. I said a while ago about 35 per cent I should judge.

Q. From what data do you arrive at that conclusion?

A. From a general knowledge of the tonnage figures.

Q. From whom do you obtain those tonnage figures?

A. From the local agent.

Q. Does the local agent of the Q. keep a record of division of this west bound freight in that way?

A. He keeps a record showing the total transfer freight received from connections each day, and he also keeps a record of the tonnage received in cars. A simple question of deduction gives you the difference. If you would like I can get those figures for you for a few days or a few weeks.

Mr. WALTER: That is just what we want.

Mr. FYFFE: Will you see that those are brought in as soon as convenient?

A. Yes, I can get them. I think you will find that my statement of team business is high and car transfer low.

Mr. WALTER:

Q. In making the calculation of expense in handling this traffic, is any effort made to keep the help or the power used in this
295 other business separate from the local business which originates here?

A. Not ordinarily.

Q. Isn't it true that the same employés that handle one handle the other?

A. Yes. Perhaps that needs a qualification. We have certain gangs as we call them, that is a gang, meaning a check clerk and his caller and a certain number of truckers work in a gang, who work on transferring cars all the time, with the exception of perhaps an hour in the evening to relieve the team crush. Then we have other gangs that will work on transfer two or three hours in the morning and then go to the door to handle team freight.

Q. There is no way in which you can segregate the expense to which your company is put in the handling of local freight from that to which it is put in the handling of through freight?

A. Only the method that I have adopted two or three times, and that is to take men with as near equal ability, judged from their work performed, as possible, and put one man on transfer and keep him there all the time and another man at the door and keep him there all the time, and keep an absolute record of the tonnage each man handled and the actual expense of his gang, and determine which cost the most money.

296 Q. You have no way of determining that because you do not keep that plan in operation do you?

A. We do not keep that in operation all the time, but I have kept it in operation long enough to satisfy myself.

Q. What did it satisfy you of?

A. It showed me that the man at the door will handle with the same number of men and at the same expense more freight than the man in the car.

Q. The freight that comes to you from the east comes in larger quantities, doesn't it?

A. As to single shipments.

Q. It comes to you in larger quantities, comes by the car load?

A. Yes, sir.

Q. The other comes by dray?

A. Yes, sir.

Q. Isn't it true in the railroad business that you can handle a large quantity of freight on a cheaper basis per ton than you can handle smaller quantities?

A. Under exactly similar conditions, yes.

Q. Have you any figures which you can give us as to the actual cost of handling this other business ton per ton as compared with the ton per ton cost of handling the local business originating here destined to the same places?

The WITNESS: Do you mean the cost including switching service and all?

Mr. WALTER: Yes.

297 A. I have not, and I will say further that the cost will vary from day to day, depending on the tonnage in the transfer cars. For instance a transfer car loaded with eight or ten thousand pounds would cost more per ton if you add in your switching and per diem and other expenses than the same car if it had twenty-five or thirty thousand pounds in it, because your divisor is very much less.

Q. You have no information from which you can determine what the relative ratio is between the handling of this larger freight and that which originates locally, have you?

A. Not the total cost. I have on the freight house cost.

Q. That is only a portion isn't it?

A. That is only a portion, yes.

Q. I believe you say you make no distinction at all in the handling of the freight either as to point of origin or point of destination provided it is going through Chicago?

A. Handle it in an exactly similar way.

Cross-examination in behalf of Burnham, Hanna, Munger Dry Goods Company, and others, by Mr. WEBSTER:

Q. In the handling of merchandise in Chicago, the same employes will handle merchandise which will come to your station by wagon that assist in handling the merchandise if it comes to you by car for distribution and re-loading?

298 A. Yes.

Q. And the same employes will assist in handling a wagon load, whether it comes from a citizen of Chicago or whether it comes from a connecting line of railroad?

A. Yes.

Q. And in either instance if the freight comes to you by wagon, whether from a merchant in Chicago or from a connecting line of railroad, you assist in unloading the freight in the same way from the wagon on to the truck or platform and then re-loading it into the car for trans-shipment?

The WITNESS: That is freight by team.

Mr. WEBSTER: Yes.

A. Yes, they are both treated alike.

Q. If it comes by team your people help to handle that freight from the wagon into the truck?

A. We take it from the rear end of the wagon.

Q. All the man that hauls it does is merely to help to put the box of goods at the rear end of the wagon and you take it out of the wagon?

A. He helps put it on the warehouse truck.

Q. He is one man?

A. Yes.

Q. You furnish all the men that are necessary to handle it, no matter how much it weighs?

A. We do not go on the wagon at all.

Q. I do not ask you that. Your men help to take it from the wagon and furnish all the help that is necessary to
299 handle it whether heavy or not?

A. We take it when it is brought to the floor of the house at the rear end of the wagon.

Q. When it is brought to the rear end of the wagon?

A. Yes, sir.

Q. That is where you take hold of it?

A. Yes.

Q. There you help to take it from the floor of the wagon on to the floor of your platform?

A. No, I have just stated to you that the teamster brought it to the rear end of the wagon and helped to load it on to the truck.

Q. Don't your men help to take it from the floor of the wagon on to the platform?

A. No, sir.

Q. Then if that is not so the man that drives the wagon unloads it from the wagon without any assistance from your men. That is not true is it?

A. I have stated that the teamster brings the freight to the rear end of the wagon and helps to put it on our warehouse truck.

Q. I ask you, do not your men help to take it from the wagon on to the trucks?

A. And I said no, sir.

Q. Then let me put it another way: Does the teamster lift it out and put it on the truck himself without any assistance from your men?

A. He puts it on to the truck with the truck set up with the flat end on the floor, and the caller turns the truck over and takes it away.

Q. Who puts the truck up there?

A. The caller does.

300 Q. Is the caller your employé?

A. Yes, sir.

Q. Then he is an assistant in the movement?

A. Yes, but he does not assist in taking that freight off the dray.

Q. Who puts it on the truck?

A. The teamster.

Q. Suppose it is too heavy for him to handle, how does it get over, fly or do you help?

A. Well, sometimes with a piece of machinery that cannot be handled in any other way our caller comes out with a roller and helps get it off the wagon, but that is a rare exception and not the rule.

Q. I do not care about exceptions or rules. Let me put it this way, if the freight is too heavy for one man to handle your men lend assistance?

A. Sometimes. Sometimes shippers send additional help for the purpose of handling such shipments.

Q. Will you tell me, since you volunteer that statement, of an

instance where a shipper sent an extra man down to the wagon because the box was a little too heavy for the driver to handle?

A. That occurs every day.

Q. That is a very general statement which does not answer my question.

A. I do not know that I have in mind a particular case right now. I know that such things do happen.

Q. I am going to put to you another question. In your
301 examination in chief you said that your men assist in handling the freight that comes by wagon from the Chicago merchants just the same as they did when it came by wagon from an in-coming railroad?

A. I say so again.

Q. And it is still so is it?

A. Yes, sir.

Q. Therefore your road is put at no more additional expense in the one instance than in the other?

A. That is true.

Q. So that your company then is not put to any additional expense in handling freight which you receive in that way by reason of the simple fact that it comes from the Atlantic and is consigned to a Missouri River city?

A. As long as it comes by team, no, sir.

Q. Take another thing, if freight from the Atlantic seaboard comes by car load and is delivered to your company, consigned to a Missouri River city, that freight is not rehandled at all?

The WITNESS: A car load?

Mr. WEBSTER: Yes.

A. No, sir.

Q. So that as to that car load you are put to no expense whatever in re-handling that freight?

A. You are talking about a car load.

Q. I am speaking of a car load now?

A. No.

Q. So, therefore, if freight from the Atlantic seaboard
302 comes to you by car load consigned to a point on your road, Missouri River city or otherwise, that car is handled with less expense than the freight which comes to you by wagon?

A. That is true, if the car load is consigned to one consignee at one destination.

Q. I will see whether that is the limitation or not. I do not think it is. If that car load comes from the Atlantic seaboard consigned to Burnham, Hanna, Munger Dry Goods Company, Kansas City, Missouri, for illustration you do not handle that in Chicago?

A. Not if the entire contents are as you state.

Q. Therefore you handle a car load cheaper than you would handle the freight which comes to you in a wagon from the merchant in Chicago?

A. Yes, sir.

Q. That would be true if that same car load coming from the

Atlantic Seaboard, was consigned to any one of the shippers who are the intervenors in this case at Kansas City, St. Joe or Omaha?

A. It would not make any difference who that car was consigned to.

Q. Now, I will go a step further. Suppose a car load of freight is made up at the Atlantic seaboard, and it is consigned to merchants in Kansas City, not confined to Burnham, Hanna, Munger Dry Goods Company, but to any number of merchants in Kansas City, that car load would not be re-handled in Chicago?

A. If the entire contents of that car were destined to firms at Kansas City, no, sir.

303 Q. Then if the entire car load was likewise consigned to any number of merchants in St. Joseph, Missouri, that car would not be rehandled in Chicago?

A. No sir.

Q. Likewise if consigned to any number of merchants in Omaha, it would not be re-handled in Chicago?

A. No, sir.

Q. As to all these shipments, the expense would be less than in the case of goods received by your company by wagon load from the Chicago merchants for their local business or to the Missouri River?

A. It would be less whatever it cost us, to handle that freight through the freight house.

Q. Therefore in all the instances I have put to you there would be a saving of money to your company would there not?

A. Yes.

Q. Is it not true as a fact that it is a matter of common occurrence for a car to arrive in Omaha containing a car load of goods loaded at the Atlantic seaboard and consigned to one, or if you please a number of merchants in the city of Omaha?

A. Not through this gateway.

Q. You mean not through this gateway?

A. Yes sir.

Q. Are you speaking for your road as well as other roads?

A. I am speaking for the C. B. & Q. Railroad only.

304 Q. You confine that to your own railroad?

A. Yes.

Q. Is it not true that like car loads frequently go over your line to Kansas City, Missouri, that are not rehandled here?

A. Not through this gateway.

Q. Let me put another question. When you say through this gateway, do you receive such consignments of goods which go to these three Missouri River cities which do not pass through Chicago, but which you receive at some other point and carry on to the point of destination?

A. Not to my knowledge, but it is entirely possible.

Q. I ask you because you speak of this gateway as if you had another route by which you might receive cars and carry them to the point of destination?

A. My knowledge is confined to this gateway and that is the reason

that I wanted you to understand that my answer applied to this gateway.

Q. Then if I understand you correctly you do not mean to say that car loads of merchandise from the Atlantic seaboard consigned to Kansas City, St. Joe or Omaha, necessarily come through Chicago?

A. Not necessarily. There are lots of other gateways by which they may reach their destination.

Q. If they went through some of the other gateways this expense incidental or contingent to which you have testified would not apply?

A. If they were mixed cars that had to be unloaded it certainly would. If they were through cars such as you have been talking about all consigned to one or more firms at the one destination they would be treated I presume the same as we treat them here.

Q. Then in such case there would be no additional expense about it?

A. No, sir.

Q. Furthermore you know, do you not, that this same expense if any there be, would attend the handling of that merchandise whether its point of destination was the Mississippi River or whether it went beyond the Mississippi River?

A. The destination would not affect the cost of handling at this point where the freight had to be transferred.

Q. So that if you received the goods here and you delivered them at any point on the Mississippi River between here and St. Louis, and they stopped there, this expense you speak of in Chicago would attend the handling of those goods?

A. Yes, sir.

Q. Then the fact that they passed from the Mississippi River to the Missouri River has nothing whatsoever to do with this expense which you speak of in Chicago?

A. No.

Q. As a railroad man you know this fact do you not, that on the Atlantic seaboard business the through rate from the Atlantic seaboard to the Mississippi River is a fixed sum of money on each class by the class?

A. Yes, sir.

Q. You know that out of the first class the proportion received from Chicago to the Mississippi River is *is* fourteen and a fraction cents?

306
Objected to by Mr. McHugh as not proper cross-examination.

A. I do not know just what proportion the line west of Chicago gets of the Mississippi River rate. I cannot answer.

Q. Do you know that whatever proportion it may be it has been in existence for several years?

A. I know there have been proportional rates for a great many years.

Q. The same proportion has been in existence for several years, notwithstanding the fact of this cost of handling freight in Chicago that you speak of?

A. Yes.

Q. Whatever the proportion is that your road receives is from Chicago to the Mississippi River, whether the goods stop there or whether they do not, it covers this expense that you have been to in handling the goods in Chicago?

A. It covers our revenue for handling the freight.

Q. You accepted that proportion with knowledge of what this expense was?

A. Yes.

Question and answer objected to by Mr. Fyffe on the ground that the witness has not been qualified as to matter of rates, and that it is not proper cross examination.

307 Mr. WEBSTER:

Q. When the company that you represent agreed to that proportion of the rate between the Atlantic seaboard and the Mississippi river, the company knew or had the means of knowledge all the time as to what this expense was if any, of handling the merchandise in Chicago?

Objected to by complainants' solicitors as calling for a conclusion of the witness, and for a statement as to matters as to which he has not been shown to have been qualified to answer, a statement as to information in the possession of others, and as not proper cross examination, and further that it assumes that the company agreed to something.

A. I answer that by stating that I had absolutely nothing to do with the making of the rates and divisions, and that question is to be answered by the party who did.

Cross-examination.

By Mr. ATWOOD:

Q. Speaking as a railroad man, what is the meaning within the terminology or parlance of railroad men of terminal service? Is the work such as you have been describing terminal service?

Objected to by Mr. McHugh as improper cross examination.

A. (No answer.)

308 Q. How many years have you been in the railroad business?

A. Thirty.

Q. A good portion of the time here in Chicago?

A. I have been here since 1892.

Q. Do you know the meaning of the term terminal service or terminal charges as used and employed by railroad men?

Objected to by Mr. McHugh as not proper cross-examination.

A. We consider everything terminal service or all expenses terminal expenses after the road train has arrived in the terminal and cut their engine and way car out.

Q. It is not quite clear to me whether you mean by that that this handling of the stuff in the freight house, receiving it from the car

or from the wagons and putting it into other cars to be in time forwarded further west, whether that cost is as you understand it described as a terminal charge and the labor a terminal service?

Objected to as not proper cross examination.

A. It is. We treated it as a terminal charge.

Q. It is so understood among railroad men speaking in the light of your thirty years' experience?

Objected to as not proper cross examination.

A. I think so, yes, sir.

309 Mr. WALTER: Is that true when the stuff is going through Chicago and when it is ending at Chicago or originating at Chicago?

Objected to as not proper cross examination.

A. The terminal expense accrues on the shipment whether it is passing through or destined simply to Chicago.

Mr. ATWOOD: That is when such service is done in part by one road, say the eastern road at its western terminus and in part by you at your eastern terminus, it is a service that can properly be called a terminal service, is that right?

Objected to as not proper cross examination.

A. In our business we speak of road service, road expense, terminal service, terminal expense, all the expenses connected for instance with a car coming from the Lake Shore going straight west over our line from the time that we receive that until we put it in a train to move west is a terminal expense.

Q. That is perfectly clear. Thank you.

A. On the other hand, all the expense that accrues on that car coming in on our line and going to the Lake Shore from the time that the road crew pulls into the yard and cuts off their engine and way car that accrues to us until we place it in the possession of the Lake Shore is a terminal expense as designated and distinguished from a road expense.

310 & 311 Mr. Atwood moved to strike out the testimony of the witness with reference to the number of cars that are moved from Chicago westward, and the proportions that are given as to freight received at the freight house of the witness' company from wagons and the proportion from cars that are through cars for the reason that it is admittedly not the best evidence and is speculative and a conclusion of the witness, and it was agreed that the same motion should be considered *ad* made by all the intervening petitioners and the defendant.

Adjourned.

312 On January 27, 1909, at 11 o'clock, A. M., the parties met at the office of Mr. Fyffe in the New York Life Building, in the City of Chicago.

Present as before.

J. M. JOHNSON, a witness on behalf of the complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. McHUGH:

Q. Give your full name?

A. J. M. Johnson.

Q. What is your business?

A. I am Vice President of the Missouri Pacific Railroad Company in charge of the traffic.

Q. How long have you held that position?

A. I have held that position about fourteen months.

Q. Where is your residence?

A. St. Louis.

Q. How many years of railroad experience have you had?

A. Thirty-eight.

Q. Where has that experience been, what section of the country?

A. It has all been in the west; that is I commenced in Indiana, on the Cincinnati and Martinsville Railroad which is now a part of the Big Four system and then from there I went to Cincinnati as assistant General Freight Agent of the Big Four from there to 313 Chicago as Assistant General Freight Agent of the Big Four, that was in 1883. From there I went to the Rock Island Railroad as Assistant General Freight Agent, later General Freight Agent, and later Freight Traffic Manager and still later Vice President of the Rock Island. I left the Rock Island in 1903 and was made assistant to the Vice President of all the Gould lines and held that position about four years when I was made Vice President of the Missouri Pacific in charge of traffic.

Q. I wish you would state what railroads extend and operate over their own lines from the Atlantic seaboard to the City of St. Louis?

A. They are the New York Central Lines, the Pennsylvania system and the Baltimore & Ohio System.

Q. Then I suppose there are others that join?

A. There are other roads which by combination make through lines which run from the seaboard to St. Louis, but these lines I speak of own or control their own rails all the way through.

Q. Is there any railroad company which has its own line reaching from the Atlantic seaboard through and beyond St. Louis?

A. No.

Q. You may state whether there are railroads beginning at St. Louis and extending westward?

A. The M. K. & T., the Frisco, the Missouri Pacific, the 314 Wabash. The Wabash have a line extending from St. Louis west. They also have their rails east of St. Louis.

Q. The Wabash extends as far as Buffalo?

A. Yes, sir. They have rails from Buffalo to the Missouri River.

Q. What railroads extend from the Atlantic seaboard to the City of Chicago?

A. The New York Central lines, the Pennsylvania and the Erie and the Baltimore & Ohio, and the Grand Trunk.

Q. The Grand Trunk Railroad and the Erie Railroad run from the seaboard to Chicago but not from the Seaboard to St. Louis?

A. Yes.

Q. Do any railroad lines extend from the Atlantic seaboard through Chicago to the west?

A. None.

Q. What railroads extend from Chicago westward to the Missouri river and terminate there?

A. The Chicago, Milwaukee & St. Paul, Chicago & Great Western, Chicago & Alton and Illinois Central.

Q. Other railroads extend from Chicago west to and beyond the Missouri River?

A. Yes, there are several which have their rails from Chicago through the Missouri River to points west.

Q. You may state whether it is a fact that the railroads of the United States started at the Atlantic seaboard in their construction and extended continuously and systematically westward
315 beyond St. Louis and beyond Chicago or were the railroads built independently starting at different points?

A. It is my understanding that construction was started from the seaboard west and also from Chicago east. I am not so sure about St. Louis. I think that is true though of St. Louis, that the construction was started east before the lines from the Atlantic seaboard reached St. Louis.

Q. And these roads that are built from St. Louis and Chicago westward were built independent of the eastern roads and without relation to the idea of a continuous line and management?

A. The lines building from Chicago westwardly and from St. Louis westwardly were independent of the lines building into Chicago.

Q. And independent of the lines building into St. Louis?

A. And independent of the lines building into St. Louis.

Q. You may state what circumstances existed at the time the railroads were built from Chicago and from St. Louis west as to those two points, Chicago and St. Louis?

Mr. WALTER: In behalf of the intervening Burnham, Hanna, Munger Dry goods Company, et al, we object to this question and to the line of examination to follow therefrom for the following reasons, first, that the said testimony is irrelevant and immaterial.

Second, it is incompetent and improper in this hearing.

316 Third, it is a repetition in effect of testimony which was given in the original matter pending before the Interstate Commerce Commission, and it is improper to renew that testimony in this hearing by witnesses who were not examined in the hearing before the Interstate Commerce Commission, and particularly so for the fact that no reason is set forth in the present petition why this evidence could not have been procured or was not procured and presented in the hearing before the Interstate Commerce Commission. Fourth, I object for the further reason that no application

was made to the Interstate Commerce Commission by application for rehearing or otherwise for the introduction of this evidence on the ground that it was newly discovered, or otherwise, it being understood that these objections above stated shall apply to all the testimony hereafter to be given by this witness along the line suggested by Mr. McHugh's question, this objection to apply to all testimony given by this witness and to be considered as made to each question as propounded, and in behalf of all the intervening petitioners and the defendant.

Mr. McHUGH: Yes, the objection made once may apply to all the testimony.

The WITNESS: Do you refer to the commercial conditions existing at that time?

317 Mr. McHUGH: Yes.

A. At that time Chicago and St. Louis occupied positions as commercial centers because of their natural advantages afforded them by water navigation and the roads I presume were built west for the purpose of distributing the merchandise which was brought into this city by their water communications and also by such rail communications as had been established from the East. In building their roads west they were separate and independent of the lines which had been built into them from the east.

Q. You may describe the way in which these railroads to the west establish their rates from St. Louis and Chicago, as to whether those rates were established in connection with rates from the east or were established simply with reference to the rates applied to the west?

A. As these roads were built from Chicago and St. Louis west they of course established their own tariffs as the construction progressed. Those tariffs were what we would call local tariffs covering transportation of all property which they carried from their Chicago or St. Louis terminus to the points which they reached in the west. Those tariffs were not joint with any transportation company east of them.

Q. You may state how the rates from the Atlantic seaboard over the rails that were built to St. Louis and the rates beginning
318 at St. Louis and going west over the western railroads affected the commercial and railroad situation and how they compelled, if they did compel, by competitive conditions the adjustment of rates through Chicago?

A. The rates from the Atlantic seaboard to Chicago and St. Louis and intermediate territory are constructed upon a percentage basis the rate from New York to Chicago being taken as the basis being 100 per cent, the rate from New York to St. Louis 116 per cent—that has lately been changed to 117, for a great many years it was 116 per cent—those rates were established practically on mileage basis without any reference whatever to any rates west of Chicago or west of St. Louis. They are established on what is commonly known as the Graham scale. Now the rate from St. Louis—I might explain. I have said St. Louis all along. This 116 per cent applied to East St. Louis and the western roads in making their rates made their rates

from East St. Louis, and that was St. Louis because that includes that little group there. Practically speaking that was St. Louis. Now the roads operating from St. Louis to the Missouri River established a certain scale of rate without any reference whatever to the rate from the seaboard to St. Louis. The combination of these two rates made the rate from the seaboard to Kansas City or Missouri River points. The roads leading from Chicago established certain
319 rates from Chicago to the Missouri River without any reference whatever to rates from the seaboard to Chicago. But the rate from Chicago to the Missouri river had some reference to the rates from St. Louis to the Missouri River. Commercial conditions were taken into consideration very largely in making those rates and Chicago was established differentially higher than St. Louis. Now the rate from New York to Chicago plus the rate from Chicago to Missouri River was not at all times the same as the combination from the seaboard to St. Louis plus the rate from St. Louis to the Missouri River and in order that all roads leading from Chicago might participate in the through traffic from the seaboard to the Missouri River, both via Chicago and via Peoria, it was necessary to establish a line up to which both could work to and work from. Now the rates from the Mississippi River all the way from St. Louis to Dubuque, to Missouri River were the same.

Mr. Atwood: You are speaking of the seaboard rates now?

A. No, I am speaking of the rates themselves, the local rates from the Mississippi River to the Missouri river are the same from St. Louis to Dubuque, so there you had a factor which was the same all the way to use in making a through rate. The matters as taken up by what we call the eastern lines and they, in connection with the western roads operating between Chicago and the Mississippi
320 River brought their rates up to the Mississippi River on certain traffic, that is traffic destined west, they brought their rates up to the Mississippi River which joined to the rates west of the Mississippi River made the same through rate from the Atlantic seaboard through via Chicago, Peoria and St. Louis.

Mr. McHUGH: That was for the purpose of meeting the necessity of allowing the rides by way of Chicago and competing on the through business?

A. That was absolutely necessary in order to enable all roads operating as I said before through Chicago through Peoria and now in fact through Milwaukee across the lake, to participate in the seaboard Missouri River traffic.

Q. There are in the matters of transportation in this country so far as it relates to transportation between the seaboard and the Missouri River cities two classifications under which freight moves. What are the terms to designate those two classifications?

Mr. Atwood: Are you talking now east of Chicago or west of Chicago?

Mr. McHUGH: East of the Mississippi River.

A. There are really three principal classifications in this country. The official classification which is applied to traffic moving between

all points east of Chicago and St. Louis and being north of
321 the Ohio River and the Potomac River to the Atlantic sea-
board. That is practically official classification territory.
The western classification applies on all traffic moving between points
west of Chicago and St. Louis and Peoria to the Pacific ocean, and
from the northern boundary of the United States to the Gulf. Of
course there are some exceptions in some districts and they are des-
ignated as a rule exceptions to the western classification, but the gen-
eral movement is under that classification.

Q. You have spoken of the third. I want to clear that up.

A. The third classification we call the southern classification which
applies on all traffic moving between points south of the Ohio and
Potomac and east of the Mississippi. I might add there that the fact
that the official and western classification were widely different in
their classification of a great many articles rendered the application
of joint rates via Chicago impracticable for the reason that the official
classification applied right up to St. Louis and the western applied
from St. Louis west. That combination was so well established it
could not be disturbed in any way at all so it had to be met. We
could not modify it in any shape, manner or form. The eastern
roads had their lines to St. Louis and the western roads their lines
west, each having its own classification and its own scale of rates
and neither would listen to any combination except the
322 through rate made up of those two local rates, each using its
own classification. The roads moving through Chicago use
the western classification from Chicago. The difference in the rate
from the seaboard to Chicago and East St. Louis was not the same as
the difference between Chicago and St. Louis when you went west.
For some years we tried to equalize that condition through Chicago
by saying—well, we got out a classification equalization which read
like this: If classified first class east and double first class west the
rate would be so and so, making the same rate as applied to St. Louis.
But there were so many changes in classification that no one could
keep up with these equalizations, and that was thrown aside and this
arrangement that I speak of of extending the rates of the eastern
roads up to the Mississippi River to the 116 per cent scale was sub-
stituted for the equalization.

Q. And when the rate by way of Chicago to the Mississippi River
were equalized with the rates to St. Louis from the Atlantic seaboard,
that carried the eastern classification to the Mississippi River on all
business from the seaboard going to the Missouri River?

A. Yes, when the eastern roads joining the western roads, lines
east of the Mississippi River arranged to extend their scale of
323 rates, their 116 per cent scale of rates to the Mississippi
River, they also extended the classification with it for the
reason that the classification extended to St. Louis on the 116 per cent
basis. That formed a dividing line there which produced exactly
the same rate conditions so far as through traffic was concerned, at
all points from St. Louis to Dubuque.

Q. Now speaking of the rate and the classification by eastern roads

to St. Louis you say forced the same rate and classification to the upper Mississippi River crossings, as you have testified?

A. On through traffic.

Q. Now, the rate from the City of St. Louis to the Missouri River cities fixed the rate between the rivers?

A. The rates were fixed from time to time between the Mississippi and the Missouri River of rates from St. Louis to Dubuque carrying rates.

Q. Speaking specifically of the rate between St. Louis and Kansas City and all of the rates between the Mississippi River crossings and the Missouri River you may state whether those rates which obtained and are charged on business say originating at the Atlantic seaboard are joint rates or divisions of joint rates with the eastern lines?

A. They are rates which have been established from time to time by the western roads as their own local rates. They are not
324 parts of through rates nor have they any relation whatever to rates east of them. They apply on all traffic originating at the Mississippi River destined to Missouri river, and they apply on all traffic through those points to the Missouri River.

Q. The point of origin of the shipment has no relation to the rate at all between the rivers?

A. Only to this extent, of course the rates from Mississippi River to Missouri River are not applied in connection with the rates from Chicago or Peoria. The rate from Chicago is made right through and the rate from Peoria is made right through, and the rate from Rockford or any of those places.

Q. I am speaking of the Atlantic seaboard?

A. They apply as I said before, on all business originating at Mississippi River points, and also on all business originating in seaport territory, and I might add in central Rate Association territory.

Q. That is territory intermediate between the Atlantic seaboard territory and Chicago and St. Louis?

A. Yes.

Q. Now to make the matter clear I will ask you to describe the kinds of rates that exist in the railroad world?

A. First we have what we term local rates, that is rates established by a carrier applying locally upon its line. Then we have
325 what we call through rates. Those are the rates which are established by agreement.

Q. Do you mean through or joint?

A. Through or joint. We generally speak of them as through rates or joint rates. Sometimes there is a little bit of difference between a joint rate and a through rate.

Q. Describe a joint rate?

A. What we call a through rate is a rate—Well, a joint rate is a rate which is established by two or more carriers, especially for the purpose of meeting competition existing by some other carrier or carriers.

Q. And that is a rate made by agreement?

A. That is a rate made by agreement, and it may be divided in

different ways. It may be divided by what we call percentage division which may be upon an absolute mileage basis, or one line may be allowed a constructive mileage, or it may be allowed an arbitrary percentage proportion of the rate. Then we have proportional rates, so called.

Q. Are those proportional rates that you speak of rates separately established by the railroads to be applied to through traffic?

A. When we say a proportional rate it is intended to be applied upon some particular traffic, as a rule.

Mr. ATWOOD: Some one commodity?

A. Not always confined to one commodity, but as a general proposition it is confined to a commodity, but there are some
326 proportional class rates. There are exceptions. A proportional rate is a rate of itself because it is established, you might say arbitrarily by the one carrier; that is not by agreement as between two carriers forming a line. Several carriers operating over the same district may have the same proportional rate and they may all have established it arbitrarily so far as joining connections over which the property moves. We call it a proportional rate for that reason, because it is applied upon some particular line of traffic and is applied arbitrarily without the consent or wishes of the joint carrier.

Mr. McHUGH: In other words you have then a joint rate which is a rate fixed by agreement of two lines. You have second a local rate which is the rate established by a railroad over its own line for transportation between points on its lines, and then you have these proportions as you call them, which are rates separately established by the railroads and they are to be applied to through business?

A. To through business. Now they are to be applied on business coming from some other line.

Mr. McHUGH: That is what I mean. Give an illustration of a separately established rate to be applied to through business?

A. We have rates of that character on grain from the Missouri River to St. Louis and Chicago. That re-billing rate, or
327 separately established rate as you term it on grain from the Missouri River to the Mississippi River was eight cents on corn and nine cents on wheat and applies from Missouri River points to St. Louis on all grain which is brought to the Missouri River from some point beyond. We have at the same time a local rate from the Missouri River on grain which is higher than this proportional rate, but this proportional rate at the same time is a rate of itself applying on all that traffic regardless of where it may originate.

Q. Provided it originates west of the Missouri?

A. Provided it originates beyond the Missouri River.

Q. Take the class rate between the Mississippi River crossings and the Missouri River, they are not joint rates you testify?

A. No.

Q. And they are not separately established rates to be applied to through business as you testify?

A. No, they are local rates.

Q. Now, this fact that rates are made to the Mississippi River from the seaboard and then rates begin at the Mississippi River and go west is what is termed in general parlance a breaking of rates?

A. What we call a making and breaking of rates.

Q. And the situation along the Mississippi River in that regard as you have testified is forced by the St. Louis situation?

328 A. Precisely.

Q. While you have in a way covered it, I wish you would explain why it is that the rates break at the Mississippi River?

A. I thought I had gone over that.

Q. You have, and it is just a repetition, but I am putting it in this form?

A. They break at the Mississippi River because the eastern roads make their rates from the seaboard to St. Louis only and do not make them beyond St. Louis, and the western roads make their rates from St. Louis west. Each system of carriers insisting upon the application of their own rates to and from the Mississippi River.

Q. Explain what effect the breaking of the rates at the Mississippi River has had upon the commercial development of the City of St. Louis, using that city as an illustration?

A. You can readily understand that a commercial center can be built up much more readily under conditions which enable them to bring their goods in and send them out on a combination of rates equal or no higher than the rate from the point of origin of the goods to the point of destination of the goods. Now, the making and breaking of the rates at the Mississippi River or at St. Louis has enabled the St. Louis merchant to bring the goods into St.

329 Louis from the east and send them out again at just the same rate that the merchant at destination would have obtained from the seaboard to his point.

Mr. ATWOOD: Do you mean the merchant west of St. Louis?

A. Yes. At the same rate that the merchant west of St. Louis could have obtained from the seaboard to destination. In other words it enables him to job the goods and in that way these large centers are built up by being able to rehandle the merchandise at no greater expense, so far as the carriage is concerned, than the party from the point of origin would have to pay to destination.

Q. You may state what the effect on the commercial condition and development of St. Louis, using that city as an illustration would be if the order of the Commission in this case should be enforced, and a railroad from St. Louis to the Missouri River should be compelled to carry all class merchandise from St. Louis to the Missouri River cheaper when the goods are shipped from the Atlantic seaboard than would be the revenue from the haul of goods originating at St. Louis?

Mr. WALTER: The Inter State Commerce Commission objects on

the additional ground that it is a mere matter of conclusion of the witness.

The WITNESS: You asked what the effect would be commercially?

Mr. McHUGH: Yes.

330 The WITNESS: In my opinion the commercial development would be retarded to a very great extent for the reason that the merchant at St. Louis would not continue to handle the same amount of business that he is handling today because the merchant in the east would have a very decided advantage over him. He would send the goods through to, the Mississippi River at a much lower rate than the merchant at St. Louis could get.

Q. Is a railroad company justified when competitive conditions require it in taking for a specific haul a division of a joint through rate which is lower than the local rate for that haul?

Mr. WALTER: The same objection as last preceding.

Mr. ATWOOD: And the further objection that the question does not suggest any limitation either above or below the cost of operation.

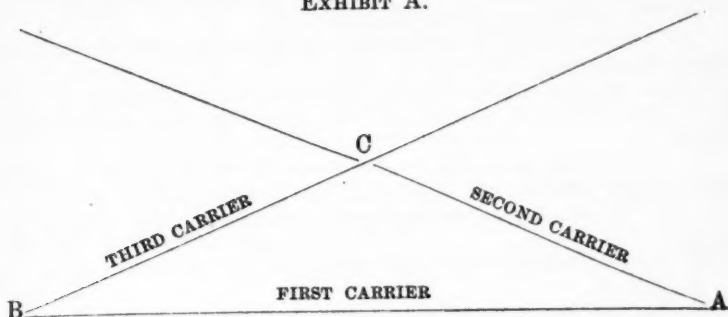
A. Yes.

Mr. McHUGH: You may explain why a railroad company is justified in accepting for a haul a division of a joint through rate which is lower than a reasonable local rate for that haul?

A. Joint rates are made to meet competitive conditions and they are as a general proposition made to meet some rate which prevails by one or more carriers having a shorter line between two
331 given points. We will say a carrier has *his* rails between A and B as shown on the diagram which I now make and is marked Exhibit A. Now, there is another carrier has its rails between A and C and a third carrier has its rails between C and B. They wish to engage in a traffic moving between A and B, in order to do so they must meet the rate established by the first carrier. That rate must necessarily be less than the combination of the local A and C and C and B, and therefore each must take something less than its local rate. In doing so as a rule they divide the shrink between them and each accepts the per centage of the through rate the total of which equals the sum of the through rate as made by the first carrier. The proportion which each receives is less than its local, still it is traffic which affords a profit and for that reason it is desirable to engage in it.

Recess until 2 P. M.

EXHIBIT A.



332

Two o'clock, P. M.

Continuation of direct examination by Mr. McHUGH:

Q. Explain what you mean when you say it yields a profit when you are speaking of the participation in a joint rate by accepting a division thereof less than the reasonable local?

A. I mean something over and above the actual cost of transportation. Of course all classes of traffic do not yield the same profit. Even all classes of local traffic do not yield the same profit. We start out with the theory that transportation is a burden and it must be distributed and we undertake to distribute it in a way that can be borne with the least burden on the shipper. If we had a postage stamp system of rates each shipper would contribute alike and each commodity would contribute alike, but that would make the rate so high on the necessities that the burden would be so great that people could not stand it, so it is distributed so that the luxuries carry a greater proportion of the burden than the necessities, or the articles which enter into, you might say, general consumption.

Q. Then the basis on which you testify the taking of a lower division of the through rate than the reasonable local is that it yields something over the expense you are to in hauling it and in that way yields a profit and if you did not take it at that rate you could not get it at all, that is the real basis, isn't it?

A. Yes, as I said first, when we say at a profit we mean something over and above the actual cost of carrying the property, the actual cost of transportation, and so long as we can get a profit we feel we are justified in engaging in the traffic.

Cross-examination.

By Mr. WALTER:

Q. You spoke of the expense of transportation?

A. I did.

Q. What did you mean by that, what do you include?

A. I said the cost of transportation, didn't I?

Mr. WALTER: The cost of transportation.

The WITNESS: In this last answer?

Mr. WALTER: Yes, what do you mean by cost of transportation?

A. The actual cost of handling the traffic.

Q. Does that make any allowance at all for the wear of the cars or of the roadbed?

A. In figuring the cost of transportation it is necessary to take into consideration all expenses in connection with the moving of the traffic.

Q. That would include of course the wear on the property
334 used either as a roadbed or as rolling stock?

A. It takes in the maintenance of the property and equipment.

Q. And operation, it includes that too?

A. Yes.

Q. Do you include in that phrase, cost of transportation, the fair proportion of the fixed charges which should accrue to the tonnage moved on that rate?

A. You cannot apportion the fixed charges to every hundred pounds or ton of freight.

Q. But in fixing the rate do you take into consideration the amount of freight that is to move under that rate and make some allowance and estimate, we will say, of what the share of that tonnage would be out of the total fixed charges cost of operation, etc.?

A. No, I do not.

Q. As I understand your testimony, it is proper that always the through rate should be less than the local?

A. No, I did not say the through rate must always be less than the local.

Q. Leave out the word always, that as a rule the per ton per mile rate on through traffic should be less than the local rate?

A. I did not say so.

Q. I will ask you whether that is true, the conditions being the same except as to being that one is through traffic and the other local?

335 A. What might be local with one line might be a through rate with two other lines.

Q. Using the word just as you used it this morning in your classification of rates.

The WITNESS: What did I say?

Q. Should not the per ton per mile rate be less on traffic originating at A, going through C to B than when it only goes from A to C?

A. To B, you mean.

Q. No, from A to C. In order to get to B you have got to go through C. I am speaking now of what the second carrier does?

A. The rate per ton per mile of the line from A to C may be exactly as the rate per ton per mile from C to B.

Q. That is not the question I put to you at all. Take through traffic which goes from A to B through C, should not the per ton per mile rate charged by that second carrier to B be less on that

traffic than when it is moved, a like amount of traffic only from A to C?

A. No.

Q. Didn't you testify this morning that the through rate—

A. Let me explain that to you. I know what you mean. You have not asked the right question. If you were to ask me is not the rate per ton per mile from A to B via C less than the rate per ton per mile from A to B I would say yes.

336 Q. That is not the question at all.

A. But the question you ask is not the rate per ton per mile from A to C on traffic going from A to B through C less than the rate per ton per mile from C to B.

Q. No, less than the rate per ton per mile from A to C on local traffic?

A. You haven't said local traffic before.

Q. I said traffic going from A to C. Now you understand the question? I will ask you again, should not the rate per ton per mile received by the second carrier upon traffic going from A through C to B be less than the rate charged by the same carrier on traffic going only from A to C, local traffic?

A. The carrier operating between A and C may receive a still higher rate per ton per mile on local traffic from A to C than he would receive on business from A to B. Then again he might not.

Q. Is not the generally recognized rule in railroad transportation that traffic going a long distance takes a less rate per ton per mile than traffic which only moves a short distance?

A. That depends on conditions. I will say no, if you want me to answer.

Q. I want an answer yes or no and then you can qualify it.

A. No.

Q. Now go ahead?

337 A. You can take a shipment from the seaboard to Colorado, that shipment may really be at a higher rate per ton per mile as a whole than the rate from the seaboard to Chicago, because of the very much higher rate per ton per mile over a large part of the line.

Q. The conditions determine that do they not?

A. That is what I said a bit ago.

Q. When circumstances and conditions are substantially similar the per ton per mile rate on through traffic is less than on local traffic, isn't that true? Yes or no, and then you can qualify it.

Mr. McHUGH: You can answer it in your own way.

Mr. WALTER: I want an answer yes or no, and then you can go ahead.

A. No. Traffic moved over a line the rates over which are constructed upon a regular increment of increase, the shorter haul would pay the same rate per ton per mile as the long haul, but if the increment decreased as the distance increased then the carrier would receive a less rate per ton per mile for the longer haul than for the shorter haul.

Q. In other words if it charges less for the local haul than for the longer haul it would get less. That is what your answer amounts to, isn't it?

The WITNESS: How is that?

Q. If it charges less for the local haul than for the longer haul it would get less. The through rate would be greater than
338 the local on the ton per mile basis?

A. I don't think I know of any case where a carrier charges less per ton per mile for local traffic than for through traffic.

Q. You say that grain coming from beyond Kansas City into St. Louis between Kansas City and St. Louis takes a less rate than when the grain originates originally at Kansas City and is going to the same point?

A. Yes.

Q. Isn't that an example of where the local rate——

A. That is not a local rate.

Q. The rate between Kansas City and St. Louis?

A. There were two rates there probably, and the higher rate was the local rate.

Q. That is a greater per ton per mile rate than the through business carries isn't it?

A. Yes.

Q. Isn't that a generally accepted basis of making rates in this country?

A. As I have said before, it depends altogether upon the section of country over which the rates are made.

Q. Conditions being substantially similar and the traffic of the same class and description, the only difference being that one has originated far beyond the property of the carrier at the time transporting it and the other traffic originating at a point on that carrier's line and only going to a point on its line?

339 A. I don't think I understand you. You do not understand making rates or you would not ask that kind of a question.

Q. Suppose that carrier only reaches across the state of Ohio from the east line to the west line. Now, on traffic originating at Portland, Maine, going to El Paso, Texas, the per ton per mile revenue received by the carrier which hauls that traffic across the state of Ohio, would be much less than the per ton per mile rate received on traffic which originates at the east boundary of Ohio, and moves to the west boundary only?

A. His rate would be less per ton per mile.

Q. On the through business than on the local?

A. Yes, sir.

Q. Isn't that the generally accepted practice of rate making in this country?

A. As a rule the carriers receive less rate per ton per mile on the long haul business than they do on the short. But as I said to you in the first place, it depends altogether on the conditions surrounding the movement of the traffic.

Q. In other words there are exceptions to that general rule?

A. But you are asking me in the first place if that traffic as a whole did not pay a less rate.

Q. You entirely misunderstood me. To come back to the same question. If that were not true then referring to your statement this morning about the movement from A to B which the two carriers which operate from A to C and C to B could not carry that traffic could they?

The WITNESS: For what?

Mr. WALTER: The carriers from A to C and C to B could not carry the traffic which wanted to go from A to B if they did not make a less rate than the sum of the locals?

A. No, they could not of course not, that is if they did not make a rate equal to the rate from A to B.

Q. If a carrier wants to carry traffic which originates at the seaboard and is destined to Missouri River cities, that carrier must meet the rate of the carrier which has the cheapest facilities for carrying that traffic into the Missouri River cities, must he not?

A. He must meet the rate made by the short line.

Q. The least expensive?

A. I don't know as it is the least expensive, but the short line. Sometimes it may be the most expensive.

Q. Does the short line when it is the most expensive line make the rate between two points?

A. The short line as a rule makes the rate.

Q. Because as a rule it is the cheapest line?

A. It is supposed to be because it is shorter.

A. Isn't it true that the more direct line is the cheapest?

341 A. As a general proposition it is.

Q. If a carrier wants to carry traffic between the Atlantic seaboard and the Missouri river cities the rate must be made according to the rate which the cheapest carrier sees fit to put in if they carry the business, isn't that true?

A. Yes that is what I said that they must meet the rate made by the short line.

Q. If they have any additional expense by reason of their own situation they must absorb that expense, isn't that true?

The WITNESS: How is that?

Mr. WALTER: If by reason of the location of a given line that line has to meet additional expenses not met by the cheaper line, the line which has the greater expense must absorb it, must it not, if it does the business?

A. If it costs it more to do business than it does the other line it simply costs more, that is all there is of it.

Q. It has got to put that into the rate, in other words the rate made by the cheap line covers all that it costs the more expensive line to do business, isn't that true?

The WITNESS: Ask that again.

Mr. WALTER: The carrier which has the more expensive route and manner of handling its business must make the rate which the cheaper line makes in order to do the business?

342 A. Not the cheaper line the shorter line. The cheaper line may be a mountain line and it may cost more to do the

business per ton per mile. It is shorter from here to New York by the Pennsylvania railroad over the mountains than it is by the New York Central which is a water line and they probably can do business cheaper per ton per mile than the Pennsylvania.

Q. They have got to meet their rate?

A. They have got to meet the Pennsylvania rate. It is the shorter line.

Q. It costs the Pennsylvania more?

A. I don't know that it does. Probably it does.

Q. Take your illustration. Carrier No. 1 can carry profitably at a given rate between points A and B for 25 cents a hundred pounds, now carriers 2, 3 and 4 have additional expenses than the first one, now do not those other carriers have to meet the rate made by the first carrier?

A. If they engage in the traffic, yes.

Q. Is a carrier ever justified in hauling a large class of traffic continuously at less than what it costs to do that business over a regular period right along day in and day out for years in and years out?

A. I should say no. I should say that no carrier is justified in engaging in a traffic which they know they are carrying at
343 a loss and continuing to do so as a regular business.

Q. Carriers do not do that kind of business do they?

A. Not as a general rule. There are instances where they do for a short time.

Q. As a general proposition extending over an entire year and each succeeding year the carrier does make a rate which yields it compensation?

A. It is supposed to.

Q. It tries to do that?

A. There is great difference of opinion as to what it costs to do traffic and it costs less in one section than another.

Q. I am speaking now of where the circumstances are the same year in and year out?

A. One manager may say that I can afford to handle that business at that rate, and another manager may say that we feel that we cannot get a profit out of it. It is a difference of opinion. It is not an established fact as to just what profit you can get out of a certain line of traffic. You cannot get the same on all roads for they are not alike, the construction is not alike.

Q. I am speaking of a common carrier which knows what the facts are and that is the presumption which attaches in the making of these rates, a carrier that makes a rate makes it on what it regards as a paying basis, does it not?

A. Yes.

344 Q. And never engages in business of a substantial amount at less than what it costs, taking into consideration all the elements?

A. I won't say it never does, but I should say it would not be justified in doing so for any great length of time. You can understand that there might be competitive conditions, competitive com-

mercial conditions that would require a carrier to continue to carry traffic without compensation for a certain time until it had established the principle for which it was contending, but to go right along day after day as a regular business I should say no carrier was justified in doing that.

Q. What is the difference between a through rate and a joint through rate?

A. I do not think we used that term joint through rate, did we? We used the terms through rate and joint rate, didn't we?

Q. You named it as one of the existing rates, a through rate you did not define and then you gave joint through rate and defined that. I will ask you whether there is any difference between a through rate and a joint through rate?

A. I don't think I described a joint through rate.

Q. Is there any difference?

A. A through rate, as I said this forenoon is as we generally term a through rate is a rate made through between two points over two or more lines. That is really a joint rate.

345 Q. The rate from the seaboard up to the Mississippi River is a joint through rate, or through rate?

A. Either one, whatever you are a mind to call it. Let me explain. You said the rate from the Atlantic Seaboard to the Mississippi was a joint through rate?

Q. I ask you if it is?

A. Not necessarily, if it was from Baltimore to St. Louis on the B. & O. railroad it would simply be a through rate. That is not joint with anybody.

Q. Through Chicago out to Mississippi River crossings?

A. From Chicago where?

Q. From New York through Chicago out to the Mississippi River crossings?

A. That is a rate made by two or more lines and we call that a joint rate.

Q. Joint through rate, isn't it?

A. The through don't mean anything. It is a joint rate.

Q. Is there any through rate on such traffic going to the Missouri River?

A. Again when we speak of the through rate we mean the rate that is published through. Now the rates are not published through from the Atlantic seaboard to the Missouri River. They are published to the Mississippi River, and published from the Mississippi River to the Missouri River.

346 Q. That 87 cents paid to the Mississippi River is a joint through rate isn't it, when it goes through Chicago over two or more lines?

A. It is not a joint through rate when it goes through St. Louis.

Q. Going out through Dubuque?

A. The 87 cent rate from New York to the Mississippi River through Chicago is called a joint rate.

Q. Is there a through rate to Missouri River cities through Chicago from the Atlantic seaboard on first class traffic?

A. You understand there is a rate. There is always a rate. It may be a combination of locals or it may be published through.

Q. What is the difference?

A. The difference is in some cases it is published up to a certain point and another rate published from there on and the two added together makes a through rate. In another case it is published right through. There are no through published rates from the Atlantic seaboard to the Missouri river via Chicago.

Q. The rate up to the Mississippi river of 87 cents through Chicago going through Dubuque is a joint through rate, isn't it?

A. Yes.

Q. And the rate from the Atlantic seaboard through Chicago through Dubuque on to Omaha is a through rate, isn't it?

347 A. Yes, it is a through rate.

Q. A through bill of lading is issued isn't there?

A. Probably way billed through as I understand it.

Q. Has it not been at any time?

A. It was not during my time here.

Q. What period does that cover?

A. It covers up to within four years ago, five years ago.

Q. You are speaking now in your answer to these queries about this rate proposition as to what was in existence four years ago?

A. No, I am not because I have answered a great many questions in relation to St. Louis and I am in St. Louis now.

Q. As to the Chicago situation, do you know anything at all except what was in existence four years ago?

A. Yes, I do.

Q. I will ask you whether it is a through bill of lading within the last four years from Atlantic seaboard to Missouri River cities, passing through Chicago, crossing the Mississippi at Dubuque, Clinton and similarly situated points?

A. I could not say.

Q. You don't know whether there is a through rate in existence of \$1.47 which rate was specified in the bill of lading on the first class of traffic originating at Atlantic seaboard passing through Chicago to the Mississippi river crossing destined to Omaha and other Missouri River cities?

348 A. I know there is a through rate of \$1.47 on first class traffic from New York to the Missouri River.

Q. That is not a joint through rate is it?

A. That is not what we call a published through rate.

Q. I ask you whether it was a joint through rate?

A. It is a rate which is made by adding two rates together. You can call it joint, or anything you please. I don't understand it so.

Q. You understand it is not a joint through rate, isn't that true?

A. Yes, I understand it is not what we call a joint through rate. It is made up of two factors which must be added together in order to determine the through rate.

Q. And the first factor covers the expense to the carriers and the revenue of these carriers up to the point where the rate ends, isn't that true?

A. The first rate covers the charge of the carrier from the sea-

board to the Mississippi river and the second factor covers the charge of the carrier from the Mississippi river to the Missouri River.

Q. In fixing that rate the carriers which made the 87 cent rate figured on what it cost them to do the business to the end of where that rate applied and on that made the rate, isn't that true?

A. Presumably so, I don't know. I want to say this in
349 explanation. Carriers do not make rates on every class and commodity, taking into consideration the cost of transporting that particular class or commodity. We do not make rates like you make prices on dry goods and groceries. We cannot do it. Rates are measurably a guess to start with, but from long experience in the making of rates and in the results obtained from such rates we pretend to be able to guess a little better than anybody else and get a little closer to what is absolutely necessary in order, taking rates as a whole and the tonnage as a whole, to make rates that will produce some profit. So I cannot say that the carrier in making the 87 cent rate from the Atlantic seaboard to the Mississippi River took into consideration just how much net revenue that 87 cent rate was going to return.

Q. That is not the question I asked. The 87 cents covers the movement from the seaboard up to the Mississippi River, isn't that true.

A. That is the first class rate.

Q. Isn't that true.

A. Yes, on first class articles.

Q. And the 60 cents covers the movement from the Mississippi River to the Missouri River?

A. Yes.

Q. Now, circumstances and conditions which existed when the first railroads were built from the Mississippi river to the westward have almost entirely changed, haven't they?

A. I should say so, yes.

Q. Do you know where the basis of 116 per cent was
350 adopted for St. Louis as compared with the Chicago?

A. I don't know exactly.

Q. Approximately?

A. I should say it was along in the seventies?

Q. Now, then, when was the next point on the Mississippi River, giving that same rate of 116 per cent of the Chicago, New York rate made?

A. Do you mean the next upper Mississippi River point?

Mr. WALTER: Yes.

A. I do not know as I can give you that. I think it was along in the eighties.

Q. Was that rate extended at the same time to all the other Mississippi River crossings?

A. That is what I refer to. There was no one particular point picked out and made 116, but when the basis was changed they were all changed at the same time and this was only on seaboard and Central Association territory traffic.

Q. You are sure that at the same time that one point known as the Mississippi River crossing was given 116 per cent of the Chi-

cago New York rate that all the other Mississippi River crossings were given the benefit of that same rate that now have it. In other words, isn't it true that by successive steps—

A. No, sir, it is not true. It is a fact that when the arrangement made with the eastern lines, which is called the Joint Rate Committee arrangement, when the joint rate Committee agreement was entered into all the points were changed at the same time from St. Louis to Dubuque.

Q. Prior to that time had any of those points except St. Louis enjoyed this 116 per cent rate?

A. None.

Q. You think that was about how many years ago?

A. I should say it was some time after 1885 or 1886. I don't remember just the year, probably along about 1887. 1887 I rather think.

Q. Simultaneous with that fixing of that rate 116 per cent the official classification was extended to the Mississippi River was it, to all these crossings?

A. On seaboard and central Freight Association territory traffic, passing through and beyond the Mississippi River.

Q. Without regard to what its destination was beyond the river?

A. Yes.

Q. The proportion of rate is not named in the tariff is it?

A. Yes it is.

Q. The proportional rate is named in the tariff?

A. The rates to upper Mississippi River crossings on business from the Atlantic seaboard and Central Association territory to Mississippi River are published, as I understand it.

Q. Do the carrier operating between the rivers publish a proportional rate—publish the proportional rate which they receive on traffic coming from the Atlantic seaboard going beyond the Missouri River?

A. They have no proportional rate from the Mississippi River. Their rate from the Mississippi River is local rate applying on all traffic.

Q. Without regard to its destination?

A. I might except transcontinental traffic. That is handled in a different way.

Q. Is that all?

A. As far as they publish them, yes.

Q. In other words they do not publish the proportional of the through rate?

A. There is no proportional of the through rate west of the Mississippi River. It is a local rate from the Mississippi River west.

Q. On all traffic?

A. On all traffic.

Q. Are you sure of that?

A. I feel pretty sure.

Q. Are you just as sure of all your other answers as you are of that answer?

A. I don't know why I should not be.

Q. I will put the question to you again and see if you understand

it. Do the tariffs contain the proportional rate on first class traffic originating in Atlantic seaboard territory carried through the Mississippi River crossings and beyond the Missouri River cities without reference to destination, except that it may be on the Missouri River cities?

353 A. I said that the eastern carriers publish a proportional rate from seaboard territory and also from Central Freight Associatio- territory as the proportional rates up to the Mississippi River on traffic destined beyond.

Q. What about the carriers between the rivers?

A. The carriers between the rivers publish a line of rates which are their local rates applying on all traffic whether it originates at the Mississippi River towns or east thereof.

Q. And without reference to destination of that traffic?

A. Without reference to destination of that traffic.

Q. In other words the 60 cent rate between the rivers applies to all traffic which originated east of the Mississippi River?

A. If it is going to Missouri River that 60 cent rate applies beyond the Mississippi River to the Missouri River and applies on traffic from the Mississippi River to the Missouri River.

Q. And to traffic from the Atlantic seaboard to Utah common points and transcontinental common points?

A. There is another rate published from the Mississippi River to Utah which applies as well on traffic which comes from the east. There is no proportional rate from Mississippi to Utah on seaboard business.

Q. Does the Missouri Pacific receive 60 cents a hundred pounds on first class traffic that it hauls between the
354 Mississippi and the Missouri River when that traffic goes to Pacific coast terminals.

A. You did not ask that kind of question at all. You asked me about what rates are published. On traffic from the Mississippi River to Pacific Coast points we earn our regular fixed proportion of that rate. That is a rate again by itself of which we earn a fixed proportion. The 60 cents has nothing to do with that rate.

Q. Let me ask you if this is not true, that instead of the rate being made up of 60 cents plus something beyond, it is made up of the rate to the Mississippi River plus another joint rate from the Mississippi River to destination?

A. It is not.

Q. How do you make the Pacific Coast terminal rate?

A. The Pacific Coast terminal rates are made by themselves.

Q. Is it a joint through rate from point of origin to point of destination?

A. Frequently the transcontinental rate is just the same from St. Louis as it is from New York. A blanket proposition extends clear out to the Missouri River. Every point between New York and Missouri River may take the same rate to the Pacific Coast. The
60 cents has nothing whatever to do with transcontinental

355 traffic. It is only a factor in Missouri River traffic and traffic destined beyond Missouri River which is again made of locals into Kansas and Nebraska and eastern Colorado.

Q. Isn't it true that the rate to Pacific Coast terminals so far as your company is concerned is not published, that is the part you receive?

A. I don't know what you mean by is not published. The through rates from Mississippi River to Pacific Coast points are published. There are divisions of that rate as agreed to by the carriers interested in the traffic.

Q. That is not published?

A. That is a matter which does not concern the public and is never published and the Commission does not require that it shall be published.

Q. Now, then the division of the through rate which your company receives is not published?

A. I want to say to you that the divisions, the percentage divisions of through rates are not published. It is not necessary. The public is not interested in it.

Q. All I am asking you is whether they are, not the reasons.

A. They are not. Understand my answer. The divisions of the through rates, that is the percentage divisions are not published.

Q. There is a joint through rate from Atlantic seaboard on first class traffic passing through Chicago and through the Missouri River cities to points beyond, like Texas common points, Utah common points, Spokane common points, Montana common points, Pacific coast terminals

A. Hadn't you better take one at a time?

Q. Isn't it true of all of them?

A. No, they are not all published through. Very few of them are published through.

Q. Take the first one, Texas Common points, how is that rate made?

The WITNESS: From where?

Mr. WALTER: From the Atlantic seaboard.

A. The rate from Atlantic seaboard to Texas is made with relation to the rate from St. Louis to Texas. In some cases it is the same.

Q. Where does it break?

A. It depends on how you carry it. Most of it moves by the Gulf and breaks at Galveston. The combination of locals via Galveston.

Q. Where it is all-railroad and goes through Chicago where does it break?

A. The eastern lines charge their full rate up to the Mississippi River. The lines operating from St. Louis say to Texas take what is left.

Q. You say that there is no joint through rate from Atlantic Seaboard territory on first class freight passing through Chicago. How could there be anything left?

The WITNESS: How is that?

Mr. WALTER: You say there is no joint through rate from Atlantic seaboard territory on first class traffic passing through Chicago to Texas common points?

A. I did not say so.

Q. Is there a joint through rate on first class traffic from Atlantic seaboard passing through Chicago, to Texas common points.

A. The rates from Atlantic seaboard to Texas are published by the Southwestern Tariff Bureau, and the basis, leaving out the seaboard cities is a fixed differential over St. Louis. The Southwest Tariff Bureau publishes those through rates, and in the division of those through rates they must allow the eastern lines their regular rate up to the Mississippi River and the lines reaching from the Mississippi River to Texas must take what is left.

Q. Do not the lines from the Mississippi River to Texas make that rate which they get as a joint rate from the Mississippi River to destination?

A. They make the rate from the seaboard to Texas.

Q. The lines from the Mississippi River to Texas make the rate from the seaboard to final destination?

A. Yes, sir, they establish the rates as certain differential from St. Louis. I am leaving out the seaboard points proper. The rates from the ports are made on a combination of locals through Galveston but when you get away from the ports and get into the interior the rates are differentially higher than St. Louis, and they
358 are published by the St. Louis Association and having no joint through arrangement with the trunk lines they must allow the trunk lines their full local rate up to St. Louis and the line from St. Louis to Texas takes what is left.

Q. In other words the lines east of the Mississippi River make their rate of 87 cents if it is 87 cents?

A. They charge their rate.

Q. You take that and add it?

A. No, we do not add it at all. We make a differential, a percentage.

Q. What is the differential?

A. I don't remember. I could not say but we have what we call defined territory. St. Louis is the basis.

Q. What is the rate through St. Louis to Texas Common points?

A. I haven't that in mind. It don't make any difference what it is does it?

Q. Take for example it is one-fifteen first class and 87 cents up to the Mississippi River. When it goes through Chicago instead of St. Louis, would there be any difference in the rate?

A. The rate is made in that way I just told you, 87 cents is not a factor in making the rate, but it is a factor in dividing the rate.

Q. We will say there has been no shipment at all, there is a new industry built up down in Texas which requires we will say
359 for the first time first class traffic, how would you make a rate on that traffic?

A. It is already published today and we would not have to make any.

Q. I am supposing that there is no such rate except the rate up to the Mississippi River?

A. It would depend on where it came from.

Q. New York seaboard territory?

A. It would be the combination through Galveston.

Q. Suppose it originates at Albany?

A. Then it would be a percentage higher than the rate from St. Louis.

Q. From St. Louis to Texas?

A. Yes.

Q. There is no rate from St. Louis through to Texas?

A. There is a rate.

Q. I am supposing there is none?

A. You should not suppose unreasonable things. I cannot answer unreasonable questions.

Q. A rate from St. Louis to Texas common points was first made at some time?

A. There is a rate between every point in the United States. There is a rate today between every point in the United States of some kind or character where there is rail transportation.

Q. For everything that might move?

A. For everything that might move.

Q. Let me ask you once more, tell me how the rate is made on Atlantic seaboard traffic of the first class going through Chicago, where does it break?

360 The WITNESS: Going where?

Mr. WALTER: To Texas common points.

A. As I explained to you, the rate from seaboard territory is made differentially higher than to St. Louis. In dividing that rate the eastern line takes its regular rate to the Mississippi River, and the lines west of the Mississippi River take what is left.

Q. What is left of what?

A. Of the through rate which was established by the Texas lines on a differential basis higher than St. Louis.

Q. And is that a joint through rate?

A. That is not a joint through rate. It is a through rate.

Q. It is a through rate made up of the Mississippi River—

A. It is not: I keep telling you it is differentially higher. It is not a local. There is no ten, twenty, thirty or forty cents added to it, but there is a percentage added to it. St. Louis is the basing point. Then we have what we call defined territory. We have the Chicago territory—

Q. The St. Louis Texas rate when it was made was made by the carriers operating from St. Louis to Texas common points?

A. Yes.

Q. In determining what the rate is to be on the through traffic from Atlantic seaboard territory to Texas common points the rate is made by adding to or subtracting from the rate from St. Louis to Texas common points a certain arbitrary amount isn't it?

A. We have what we call defined territory. St. Louis being the basing point we have Chicago territory which takes a certain line of arbitraries above St. Louis. Then we have the Cincinnati territory and we have the Detroit territory and we have the Pittsburg terri-

tory. Now they are made by adding certain arbitraries above St. Louis but they are not factors in dividing the rate.

Q. Out of that rate you pay the carrier who hauls it up to St. Louis—

The WITNESS: His tariff?

Mr. WALTER: Yes.

The WITNESS: Not this differential that we add.

Mr. WALTER: His local rate if you call it local, up to St. Louis?

A. That is what I said to you. I said that the seaboard territory took a basis differentially higher than St. Louis, but in fact the rate we allow him is a local rate up to the Mississippi River.

Q. Do you know what that amount is when you come to put the arbitrary on to the St. Louis rate?

A. We know what we have to allow?

Mr. WALTER: Yes.

The WITNESS: Yes.

Q. And you fix your arbitrary to get as much out of it as
362 you think you can get?

A. The arbitrary is fixed for several different reasons. It is fixed for commercial reasons. The rate that they are going to charge for their haul up to St. Louis while it is a factor it is not the controlling factor by any means. For example Cincinnati as a rule takes the same rate as Chicago, but the Cincinnati traffic may not move through St. Louis at all, although it is made differentially higher than St. Louis. It may move down over the Queen and Crescent and through New Orleans and go into Texas that way. So I tell you the arbitraries added are not factors in dividing the rate.

Q. The arbitrary is made by the carriers operating from St. Louis into Texas isn't it, so that they do control the rates?

A. The lines operating from St. Louis to Texas assume control of all through rates.

Q. From point of origin to destination?

A. From point of origin to destination.

Q. Out of that they pay the carrier east of St. Louis his tariff rate?

A. Yes.

Q. This 60 cent rate between the rivers is a separately established published rate applicable on through business and also applicable on local business isn't it?

A. It is applicable on all business originating in Central
363 Freight Association territory and in trunk line territory and also applies on all local business from Mississippi River to Missouri.

Q. It is a separately established published rate applicable on that business?

A. Not alone on that business. Applicable on all business crossing the Mississippi River going to the Missouri River.

Q. That is the only rate that is published, isn't it?

A. Oh, no there are a thousand rates published.

Q. Applicable on that business?

A. Yes, 60 cents is only the first class rate.

Q. I am speaking of first class?

A. That is the only rate published from the Mississippi River to the Missouri river on business for the Missouri River.

Q. Which originates in Atlantic seaboard territory?

A. Yes.

Mr. McHUGH: Whether it originates on the Atlantic seaboard or C. S. A. territory or Mississippi River?

A. Yes, if it originates in Chicago that is another proposition.

Cross-examination.

By Mr. ATWOOD:

Q. Since you are here in the capacity of an expert as we understand it—

364 The WITNESS: Well, I am not.

Mr. ATWOOD: You wrong yourself in not describing yourself as such.

A. I do not pretend to be an expert.

Q. Your deserts go beyond your pretensions. It is quite necessary whether you are here as an expert by pretense or actuality that there should be an understanding of the terms that are employed, and it may be my fault, and if so I will apologize for asking these questions, but ask them just the same. In your vocabulary and the definitions incident thereto what do you mean by a through rate?

A. A through rate in the common term is what it costs to move an article from one point to another.

Q. Whether you charge it or not?

A. You must charge it.

Q. Then it is what is charged rather than what it costs. You mean what it costs the man who pays the freight?

A. Yes.

Q. You say the common acceptance of the term. Is that the way you use the term, through rate?

A. Yes.

Q. Does that embrace a shipment along and over more than one line of road?

A. Yes.

Q. As you employ the term?

A. Yes.

Q. Now, what is a joint through rate, if there is any such term in your vocabulary?

365 A. A joint rate is a rate that is made by two or more carriers.

Q. That is equally true of a through rate?

A. No, a through rate may not be made up by any joint agreement. A through rate—you ask me first about a through rate.

Q. I asked you if a through rate included a shipment through more than one line of road and you said yes, go on?

A. A through rate is the charge from point of origin to destination. That may be published by two or three different carriers making up

that line. The combination would be the through rate or the through charge, but it might not be a joint rate. A joint rate is a rate which, as we understand it is made by agreement as between the lines.

Q. A joint through rate, if I can be permitted to add that adjective to the description, is the result of an agreement between two or more carriers who convey merchandise between two common points, is that right?

A. That is the way I would apply it. Others might apply it differently.

Q. I am now asking if that is what you understand to be the acceptance of the term in the parlance of railroad men of which you are one?

A. Yes, I understand when the word joint is employed it means by joint agreement.

366 Q. And that the through rate is a rate between two points that are served by more than one carrier?

A. Not necessarily. It may be one carrier. A through rate may be on just one line because it is a charge between two points.

Q. How do you distinguish between such a through rate and a local rate?

A. The word local is applied in a great many different ways. As a rule when we speak of a local rate we mean a rate on one line between points on its line.

Q. That is what you just said a through rate might be?

A. Of course it may be a through rate too. It may be all local to that road and still it may be a through rate.

Q. Then if I understand you a through rate may be a local rate and a local rate a through rate?

A. Yes, sir.

Q. In the parlance of railroad men, as you understand a railroad man, there isn't any difference then between a through rate and a local rate?

A. Yes there is.

Q. I asked you a question and you gave a definition of a rate between two points served by one road. You said it might be a through rate or might be a local rate. If there is a distinction give it to us?

A. I said this, that a rate between two given points might be a local rate, and of course it would be the through rate between
367 those two points. Then I said further a through rate was the rate charged between two points. Now, we might take a rate from Chicago to El Paso. That is a through rate. By some lines it is a joint rate by another line which has its rails all the way from Chicago to El Paso it is a local rate, and still it is a through rate because it is between two points; but it is not a local rate where two or more lines have made it up.

Q. Then as I understand you the fact as to whether or not it shall be called a local or a through rate is to be determined by the fact that there is one carrier between the two points or more than one, is that the fact?

A. Where there is but one carrier between the two points it would be called a local rate.

Q. Not a through rate?

A. It is a through rate because it is through between the two points.

Q. But I am talking about the use of the word as it is employed by railroad men?

A. If you would ask me what the through rate was from Chicago to Omaha on first class I would tell you 80 cents. If you would ask me what was the local rate I would tell you it was 80 cents. That would be the local rate by the lines running there direct, and it would be the local rate so far as all lines as a body were concerned,

but it would not be the local rate made by Peoria or made by
368 some other route.

Q. The through rate as I understand you is a through rate if served by more than one railroad or not? You say in one breath it may be a through rate if served by a single carrier because it is the through rate between those two points, yet, if more than one carrier is employed to serve those two points it ceases to be a local and becomes a through as to those?

A. Yes, it is a through as to those.

Q. You have explained, as I understand you, that a joint through rate is one which is the result of agreement between the serving lines?

A. That is the general acceptance of the term joint rate.

Q. What is the proportional rate, if there is any such term in your lexicon?

A. We frequently establish a rate from a commercial center applying on some particular commodity which is to be applied on the traffic of that commodity coming from a point from which a proportional rate applies.

Q. What is a division of a rate?

A. A division of a rate is the proportions which have been agreed upon by the carriers.

Q. Is there any difference in the way they are dealt with as to whether they are billed or published, the proportional and the division?

369 A. Yes, proportional rates are published. Divisions are not, as a rule.

Q. The division is left to be settled between the roads without publication or billing?

A. Yes.

Q. While the proportion is right on the bill?

A. The proportion is published right in the tariff.

A. As I understood you a little time since the 14.7 cents from Chicago to Mississippi River crossings was described by you as proportional?

A. I never said anything about the 14.7 cents.

Q. What is the rate between Chicago and Mississippi river crossings or proportions?

A. There are no proportional rates from Chicago to the Mississippi River that I know of.

Q. Are you quite sure that in billing stuff to Omaha via Chicago and Mississippi River crossings that the bill does not cause it to appear that the proportion is 14.7 cents Mississippi River crossings and 60 cents from that point on?

A. The earnings accruing to the line from Chicago to Omaha on seaboard traffic which I presume you have in your mind is 60 cents a hundred, being the rate from the Mississippi River to the Missouri river plus its percentage proportion of the through rate from New York to Mississippi River.

Q. Then we are agreed I take it from your rather circumlocutory answer, that the 14.7 cents is set down as a proportion that is paid out of the total rate for the service between Chicago and the Mississippi River crossing, is that right?

A. Paid out for the service?

Q. Yes.

A. No, it is received for the service.

Q. Paid out by the shipper?

A. The shipper pays the amount in total. He knows nothing about the divisions. I do not say that 14.7 cents is right.

Q. Take my word for it that that is right, assume that 14.7 cents is the proportion between Chicago and Mississippi River crossings I ask you if you state that the billing does not indicate that fact and show to any man who reads that bill of lading that the proportional rate is from Chicago west 14.7 cents to the Mississippi River crossing and 60 cents beyond.

A. I say no. There are thousands of bills that do not show any division at all. Billed the full rate from Chicago.

Q. Will you again state whether or not you do describe the 14.7 cents or the rate, whatever it may be, from Chicago, the proportional, whatever it may be, from Chicago to Mississippi River as a proportion or a division?

A. The proportion of the through rate, or rather the division of the through rate from the seaboard to Mississippi River accruing to the line west of Chicago is added to its local rate west of the Mississippi River and the combined sum represents the earnings of the lines from Chicago to the Missouri River.

Q. That is not at all what I asked you. It was this, whether or not you describe that portion of the total rate that pays for the service between Chicago and the Mississippi river crossing as a proportional rate or a division of a rate, how do you describe it, that portion of the through rate from the Atlantic seaboard to Omaha that is paid for the service between Chicago and the Mississippi River crossing. Do you describe it as a proportional rate or a division of a rate?

A. The proportion of the rate accruing to the line from Chicago to the Mississippi River, of the through rate from New York to Mississippi river, is its division of the rate from New York to the Mississippi river.

Q. Then it is not a proportion but is a division isn't that your

statement. You have described a proportion as one that was published and billed?

A. I did not describe a proportion. I described a proportional rate which is an entirely different proposition from a proportion of the through rate.

Q. Take that as the term that you choose to employ, a proportional rate then of the through rate——

372 A. There is no proportional rate from Chicago to the Mississippi River. Get that out of your mind. But there is a division of a through rate which is the proportion accruing to the line from Chicago to the Mississippi River.

Q. Then your statement is that there is no proportional between Chicago and the Mississippi River crossing, 14.7 cents or otherwise?

A. Yes, sir, there is no such proportional rate.

Q. Will you give an illustration of a proportional rate drawing on the fund of your experience?

A. We have proportional rates on grain from the Missouri River to Mississippi River of 8 cents on corn and 9 on wheat. Those rates apply on grain coming from beyond the Missouri River which pays a rate into the Missouri River, and when it goes forward it pays this proportional rate up to the Mississippi River or up to Chicago. We have a proportional rate also to Chicago.

Q. And do I understand you also as saying that moving from the east to the west there is in the first five classes no proportional rate between Chicago and the Missouri River?

A. None that I know of.

Q. You have spoken several times of making the rate such a rate that it shall pay for the cost of transportation and some profit. What was in your mind when you used the words some profit,

373 what percentage?

A. I did not have any percentage in mind.

Q. Will you state what as a man skilled in freight rate matters, in your judgment is, taking it as a whole, a fair profit to make over and above the expense of transportation?

Objected to by Mr. McHugh as not proper cross-examination.

The WITNESS: Do you mean what is a fair profit to a carrier?

Mr. ATWOOD: Yes.

The WITNESS: Over and above the cost of operating its property?

Mr. ATWOOD: I used your own language. You said transportation, and I am employing that term. It is a very good one for the Supreme Court of the United States employ it very much. I am asking if you knew what you meant when you said cost of transportation. Now, I want to know the profit beyond that that you figured proper?

A. I had this diagram didn't I?

Mr. McHUGH: You said that you could take——

Mr. ATWOOD: I object to this.

Mr. McHUGH: You say he said that. That is a statement of yours. Now he wants to know what he said.

Mr. ATWOOD: He is quite as capable as counsel is of telling
374 what he knows and what he meant.

The WITNESS: I said this if I remember correctly, that the carrier between A and C joined the carrier C and B in meeting the rates established by the carrier A and B, provided there was some profit in the business.

Mr. McHUGH: That is exactly what he said.

Mr. ATWOOD: Do not play the part of a Greek Chorus Mr. McHugh.

The WITNESS: It is impossible for any traffic man to determine the measure of that profit. You cannot figure it down that close.

Q. How do you figure profit at all if you cannot figure how much it is going to be or approximate it?

A. It would depend largely on the class of traffic. If that joint rate there was made to meet this rate on some particular line of traffic and confined to that particular line say like coal or coke or something of that kind you could come a little nearer figuring the cost than you could if that combination was made for the purpose of meeting the rate made by this carrier on all classes of traffic that moves over the road.

Q. Do you want to have a special class of commodity selected? Take dry goods, what would you think would be a fair profit?

A. I could not tell anything at all about what would be a fair profit on dry goods. Nobody else can tell.

375 Q. If you are right sure that the rate should be made on such a basis to give you some profit how are you going to determine that it would be some profit if you cannot determine in any degree how much the profit would be?

A. It is impossible to tell the measure of profit that you can make on any first class or second class or third class article.

Q. Whether one per cent or fifty?

A. Yes, whether one per cent or fifty.

Q. Or 126?

A. Of course there is a limit.

Q. Of course you are assuming——

A. As I told you a while ago these rates are made after many years of experience in making rates, and as I said before they are largely a guess as yet. We know that a certain line of rates for a certain class of traffic under ordinary conditions will produce some profit. We cannot tell just what the measure of the profit is. It may be greater one year than another and over some roads may afford greater profit one year than another. It depends altogether on the cost of operating. Operating expenses are very much greater one year than another and may be greater in one section of the country than in another.

Q. Can I ask you if you are able to determine that there is any profit made at all, why is it that you cannot give us some
376 idea as to the amount of profit, anywhere between one per cent and fifty?

A. Because it is impossible. We do not know what the tonnage is going to be for any given period. You cannot single out any

particular article and tell what it cost to transport that article unless it is some very heavy commodity.

Q. In making up a freight schedule, if you ever did so, would you make it up with no idea as to what profit it would bring in, not even an approximate idea of what it would range between one per cent and 1000 per cent?

A. You make it up in view of the rates that have prevailed previously and in that territory and for new territory you make it up in relation to rates which are in effect in other territories as your knowledge, having dealt with rates for many years gives you some idea as to whether there will be some profit or not. That profit will largely depend on the cost of operation.

Q. The first of the factors in that problem is of course the cost of transportation?

A. Yes.

Q. Then would it not be your purpose to add to the cost of transportation enough to give you some sort of a profit in making up such a schedule?

A. No we have not made them in that way.

Q. You would simply make up the schedule so that you would be sure of some profit but would not have any idea of what the profit would be, is that it?

377 A. We would make that up—

Q. Please answer yes or no?

A. We would make the schedule up assuming it would afford some profit but we would not have any idea of the exact amount of profit.

Q. Either exact or inexact you would have no idea of the profit?

A. We would know that the profit would be reasonable.

Q. What is reasonable, that is what I want? What do you mean by reasonable?

A. Reasonable is a fair return on the investment.

Q. It has got to be a percentage of course?

A. I don't know. It would be different in different sections.

Q. What is your judgment? You are here as an expert?

A. I object to your calling me an expert.

Q. I beg your pardon I am trying to pay you a compliment.

A. I do not come here as an expert.

Q. Then as one not expert but with many years of experience, at your back, what did you mean when you said a little time since that it ought to be a fair profit or fair return upon the investment. What had you in mind, what percentage?

A. I presume 6 per cent would be a fair profit on the investment.

Q. Then you think a profit of 50 per cent would be ex-

378 orbitant? I take it?

A. On the property as a whole, yes.

Q. A profit of 126 per cent would be exorbitant?

A. On the property as a whole.

Q. Taking a rate producing that which it was demonstrated would pay a profit of 126 per cent, would you say that was a reasonable rate?

A. That might be a very reasonable rate because you might be compelled to carry a great deal of tonnage that would not pay you one per cent.

Q. You would expect one man to pay 126 per cent profit to make up for the mismanagement of the other?

A. No, sir, not for the mismanagement.

Q. Misfortune then?

A. No, sir, it is a distribution of the burden.

Q. Your notion of freight rate making as I understand it is that you are justified in charging upon one commodity or one class of customers 126 per cent if per chance you are only able to make one per cent upon another class of commodities or another class of patrons?

A. I object to your stating 126 per cent. I do not say that is what we get.

Q. I used that as an illustration and you said you were entirely justified?

A. Then I do not have to answer your illustration do I?

Q. You will have to answer questions unless you choose to refuse?

A. I am willing to say that the carrier is justified in establishing rates that will afford a very much higher percentage of profit on one article than on another.

Q. A shipment made from New York via Buffalo and Hannibal on the Wabash to Kansas City and thence to Galveston by the Santa Fe, would there be any proportional rate on the through rate, the joint rate or whatever term you will describe the whole rate by from New York to Galveston, is there in that through rate any proportional rate?

A. As we apply the term proportional rate, there is no proportional rate in that rate.

Q. There is a division of a rate?

A. Yes, there is a division of that through rate. Now let me qualify that. That through rate is not a joint rate. It is a rate arbitrarily established by the St. Louis Texas carriers. Now it is divisible, and it is divided by the St. Louis Texas lines allowing the lines from New York to St. Louis local rates.

Q. Let me see if I understand you. In the rate from New York to Galveston via the route that I have indicated, there is no proportional rate, but each service is paid for by a proper dividing up of that rate?

A. Yes.

Q. Thus we might speak of these subdivisive proportions as divisions of the whole rate, is that right?

A. Yes, you can call them part of the through rate.

Q. Let us for argument sake call the total rate 147 out of that 147 the proportion that went to pay the Wabash for its service from Buffalo to Kansas City, would that be described as a division of the whole of that rate?

A. No.

Q. How would that be described?

A. The proportion from Buffalo to Hannibal would be described

as a division of the proportion accruing to the line from New York to Hannibal.

Q. And from Hannibal to Kansas City?

A. From Hannibal to Kansas City would be the Wabash's proportion of the rate accruing to the line from Hannibal to Galveston. That is another division.

Q. Then the Santa Fe's service from Kansas City on would be still another division?

A. The Santa Fe's service from Kansas City on would be still another division of the earnings accruing to the line from Hannibal to Galveston.

Q. Not a division of the proportion?

A. Not a division of the proportional rate but a division of the proportion of the rate.

Q. I was attempting to divide the whole rate. Let me see if I understand the way you mean to be understood that the rate would be divided. If the service from Kansas City to Galveston over the Texas line would be one division or part of that rate?

A. Yes.

381 Q. From Hannibal to Kansas City would be another division and from Buffalo to Hannibal still another and from New York to Buffalo still another, is that the way the total rate would be divided?

A. That is the way the rate is divided. Now let me explain.

Q. All right sir.

A. That is not the way the rate is made up.

Q. I have not asked you anything about that?

A. I know. That is the way the carriers divide the rate in order to secure to themselves a compensation, the proportion accruing to their part of the whole.

Q. But according to your statement the Wabash takes two divisions for its service, one from Buffalo to Hannibal and the other from Hannibal to Kansas City?

A. Yes.

Q. Each of them is described as a division of the whole rate?

A. Not of the whole rate. To a layman I suppose it is a division of the whole rate, but you do not take the 147 and apply some—

Q. I am not talking about 147, I am talking about the rate on the whole. The whole is no more than the total of all its parts even in railroad arithmetic is it?

A. No.

Q. I will ask you again if there is any different description given to that portion of that whole rate that you call a division from
382 Buffalo to Hannibal than is given to that portion or division from Hannibal to Kansas City?

A. They are both divisions of a rate, not of a through rate.

Q. They are divisions of the whole rate from New York to Galveston aren't they?

A. Not the way we apply divisions.

Q. Let us see?

A. Let me explain.

Q. All right?

A. The Wabash gets a percentage division of the rate from New York to Hannibal for its haul from Buffalo to Hannibal. That is a rate of itself there. The trunk line rate which they apply on all their traffic. When you get to Hannibal you have got to take what is left out of this other rate from New York to Galveston. Now, this proportion, not proportional rate, because it is not published——

Q. I thought we were talking about divisions, a little while ago?

A. It is a proportion. The Wabash again gets a division, a percentage division of this proportion which is left from Hannibal to Galveston.

Q. Let me see if we are not one after all despite the verbiage employed. Then the Wabash is paid for its service between Buffalo and Hannibal a division of the whole of the New York Galveston rate, isn't that the fact?

A. Not the way we express it.

Q. Don't they get part of that whole rate?

A. They get part of the rate.

383 Q. I will put it that way, they get part of that which they receive as compensation for the service between Buffalo and Hannibal and that is part of the whole of the rate isn't it?

A. Yes.

Q. And that from Hannibal to Kansas City is part of the whole of the rate isn't it?

A. Yes, but it is not what we call a division of the whole of the rate.

Q. It is part of it anyhow, whether it is a division or not isn't it?

A. To a layman I suppose it is, but to us it is not a part of the whole of the rate because we apply the terms in a different way. I said the Wabash received for its haul from Buffalo to Hannibal a division of the rate from New York to Hannibal. That is a rate of itself. Now there is a certain amount left of this through rate made this way and the Wabash gets a division of what is left.

Q. I think that is three times you have told us so and that was not the thing I asked you at all. I will again ask you if there is not such a thing as shipping a hundred pounds of first class commodity from New York to Galveston and paying a certain sum for that service?

A. Yes, sir.

Q. And when that money is paid it is divided between the people who have performed the service, isn't it?

A. Yes, sir.

384 Q. And the Wabash gets for its service between Buffalo and Hannibal a part of that total sum don't they?

A. The Wabash for its service from Buffalo to Kansas City gets part of that sum.

Q. And from Hannibal to Kansas City a part of that sum?

A. I said Buffalo to Kansas City.

Q. We will stick to the question I propounded a minute ago. Do they get for their service in that instance between Buffalo and Hannibal a part of that sum?

A. Yes.

Q. And for their service between Hannibal and Kansas City another part of that sum?

A. Yes.

Q. And is the description of the way bills of the sum received for the service between Buffalo and Hannibal a different description than the description of the sum that is received for the service between Hannibal and Kansas City?

A. I am not familiar with the Wabash's method of billing, but I presume it is. I rather think that the property is waybilled from New York to Hannibal and then it is again waybilled from Hannibal to Galveston and the waybill from New York to Hannibal is taken up in joint account with the lines which carried it and divided by them and the waybill from Hannibal to Galveston is taken up by another set of lines and divided by them, so the Wabash I take it

received from the eastern connection its proportion for the
385 haul from Buffalo to Hannibal and from the western its proportion for the haul from Hannibal to Kansas City.

Q. You spoke of the situation commercially existing in St. Louis, the history of the commercial world in that vicinity, and so on, saying that with the proposed rates established, as I understood you, and you will correct me of course if I am wrong, the in and out for the St. Louis man would be such that he would be at a disadvantage as compared with the Atlantic seaboard west-bound shipper, is that what you intended to say?

A. Yes, I think he would be at some disadvantage.

Q. What is the situation now as between St. Louis and Kansas City on in and out on stuff destined for points west of the Missouri River, say in Nebraska and Kansas? To be a little more specific, isn't it a fact that now the in that the Missouri River shipper has to pay and the out that has to be paid on goods destined for Central Kansas or Nebraska points is a sum of two sums an amount greater than the in and out to that same point when the in and out is on St. Louis?

A. No, not as a general proposition. As a general proposition the through rate from St. Louis to points west is the rate to Kansas City plus the rate from Kansas City to point of destination.

386 Q. Are you sufficiently conversant with the facts in this regard so that you feel that you are speaking by the book?. I do not want to trespass on some field that you are not familiar with, that is all.

A. I say as a general proposition as to trans-Missouri territory.

Q. As a general proposition you think that is true?

A. To trans-Missouri territory. That is not of course to trans-continental. That is not absolutely true as to some points in southern Kansas and points in Oklahoma.

Q. In other words, there are a good many points where the St. Louis shipper is at a considerable advantage over the Missouri River shipper?

A. I would not say considerable. There are some points in southern Kansas which we call percentage points. They take a percentage of

the combination through Kansas City. Wichita I think takes 95 per cent on the locals through Kansas City.

Q. In this instance at least the St. Louis shipper is at some advantage over the Kansas City shipper?

A. I think some slight advantage.

Mr. WALTER: One question that has occurred to me. When a bill of lading is issued, for example, by the Pennsylvania Railroad at

New York City on first class stuff destined to say Kansas City,

387 does not your agent in New York take up that bill of lading and issue your bill of lading, naming the final destination Kansas City, with the through rate on it?

A. I understand the practice to be this, the Pennsylvania issues its bill of lading to the Mississippi River. I might make it more general and say the traffic lines issue bills of lading only to the points to which they publish their rates and as they do not publish their rate west of the Mississippi River they issue their bills of lading to the Mississippi River only. Then it is the practice of some of the western lines who have agencies in New York, not all of them, and I cannot say whether we are following it now or not, to take up that bill of lading of the trunk lines and issue a receipt for that bill of lading. They do not issue a new bill of lading for the property. They simply issue a receipt for a receipt.

Q. A bill of lading is only a receipt isn't it?

A. A bill of lading is a receipt for the property. This is a receipt for paper, not for goods. It says, Received of the Pennsylvania Railroad a bill of lading or receipt calling for so and so.

Q. Does that not name the through rate?

A. That has no value whatever in commercial business.

Q. Doesn't that name the through rate?

A. That is the object to name the through rate.

Q. Wasn't that the practice of your road until at least a

388 short while ago if not now?

A. I could not say positively. I think it has been the practice of the road in the past. It may be today.

Redirect examination.

By Mr. McHUGH:

Q. You have described the practice of the railroads establishing rates between stations upon the line, in other words establishing a local rate. Do the railroads join with other roads in through rates and take a division of a through rate for the haul between those stations less than the local rate between those stations, except where there is some other compulsion of competitive conditions?

A. No, it is competitive conditions which establish joint rates.

Q. You have been asked with respect to rates which are through rates to Texas points from the seaboard and the division of that rate, or the part of that rate accepted for the haul between the rivers. You may state whether that is the result of a competitive condition making it necessary?

A. Absolutely so.

Q. What is the competitive condition that makes that necessary?

A. Primarily the rates from Atlantic seaboard to Texas points are made for the Gulf and two factors enter into the making of the rate from New York to Galveston.

389 Q. By water?

A. By water. To which are added the Texas Commissioner's rate from Galveston to the different points in Texas. Now, in making the rate all-rail from the seaboard we must meet that competition or forego the traffic. In meeting that competition the through rates being less than the combination of locals all the way through when divided up affords some parts of the line less than they receive on their local traffic.

Q. With respect to that business the question presented to the Railroad Company is, shall we haul at that rate or not at all?

A. Not at all. I said they must meet those rates or forego the traffic.

Q. Is that likewise true with respect to the trans-continental traffic.

A. It is. Trans-continental rates are established primarily to meet water competition, both via Panama and via the Horn. Now that competition extends all over the country in a commercial way and that is the reason why so many trans-continental rates are what we call blanket rates. They might be the same over the whole territory east of the Missouri River. It is in order to equalize the different commercial conditions and keep manufacturers practically on an equality.

Q. Is that true with respect to the proportion of the through rate from the seaboard to St. Paul and Minneapolis?

A. The rate from the seaboard to St. Paul and Minneapolis
390 are less than the combination through Chicago. That is forced by the competition of the Canadian Pacific and through line Soo, and in some respects by the water route.

Q. Is that likewise true of the through traffic from the seaboard to Oklahoma?

A. Yes.

Q. What is the basis of the commercial competition that compels that?

A. Because of the relation as between Oklahoma and Texas the rates from the seaboard territory to Oklahoma are fixed differentially higher than St. Louis. When they are fixed differentially higher they are lower than the combination of locals.

Q. That same choice is presented to the railroads engaged in that transportation?

A. We can engage in the traffic at the rate forced by the shorter lines or we must forego it.

Recross-examination.

By Mr. Atwood:

Q. What is that part or portion of the inter-river service, we will say, on Atlantic shipments destined for Oklahoma as compared with Atlantic shipments destined for Galveston, are they higher or lower or the same?

A. They are higher.

391 Q. To the Oklahoma points higher than to the Texas common points?

A. You did not say Texas common points, you said Galveston.

Q. I withdraw that and change it to Texas Common points?

A. I corrected you because Texas common points take higher rates than Galveston. I knew Galveston rates are much lower than Oklahoma rates, and for that reason I knew that the proportion between the Mississippi and Missouri River was greater on the Oklahoma haul than it was on the Galveston haul, but I cannot say positively whether we earn more from the Mississippi River to the Missouri River on Oklahoma than on Texas common points. We may.

Q. How far south does the Texas common point territory extend?

A. It runs to San Antonio.

Q. What is the nearest point to the Gulf?

A. I think the nearest point to the Gulf is about the first or second station out of Houston.

Q. In miles, how far is it approximately?

A. Close on to 300 I should say. I am not positive about that.

Q. How do you compare the rates between Texas common points and Oklahoma common points. Which is the higher of those two on Atlantic seaboard shipments?

A. I could not say now. I have not the tariffs before me.

392 Q. You do not know which is higher?

A. My impression is that the Texas common point rates are higher.

Q. Is that due to the greater length of haul or due to the proximity of the Gulf?

A. That is governed by the water competition. It is less in Oklahoma than it is in Texas.

Q. Let me see if we understand one another. I understood you to say that the Texas common points are higher than the Oklahoma common points?

A. Then it is reversed. What was your question? I am mixed on it.

Q. The question is whether or not the fact that the Texas common point rate is higher than the Oklahoma common point rate was due to the proximity of water and danger of water competition?

A. I said at first that I am not sure that the Oklahoma rates are more than Texas common point rates. My impression is they are somewhat lower.

Q. Then of course it is not worth while to discuss that.

A. (No answer.)

Mr. WALTER: Is there any greater competition on Atlantic seaboard business to Missouri River cities and beyond of the carriers east of the Mississippi river than on the carriers operating

393 & 394 between Chicago and the Missouri River?

A. I would not say the competition was any keener.

Adjourned to ten o'clock tomorrow morning.

395 On January 28th, 1909, at ten o'clock, A. M., the parties met pursuant to adjournment.

Present as before.

GEORGE H. CROSBY, a witness produced on behalf of the complainants was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. State your full name?

A. George H. Crosby.

Q. What position do you occupy with the Chicago, Burlington & Quincy Railroad Company?

A. I am Freight Traffic Manager.

Q. How long have you been identified with the Burlington Road?

A. Thirty-two years.

Q. In what capacities?

A. In various capacities from clerk up to the present position.

Q. Your service with the road was in the traffic department all the time?

A. Yes, sir.

Q. Where are you now located?

A. At Chicago.

Q. Where were you located before you came to Chicago?

A. At Omaha, Nebraska, for thirteen years.

Q. You are familiar with the system on which rates are established and maintained on the articles moved under class rates between the Mississippi River and the Missouri River cities?

A. Yes, sir.

Q. You may state whether or not those class rates are parts of joint rates from the Atlantic seaboard to the Missouri River cities?

Mr. WALTER: The same objection as heretofore made to the other witness' testimony.

A. The rates are applicable between the Mississippi and Missouri Rivers on any business. They are not parts of any rate particularly.

Q. They are rates established and charged on all business?

A. Yes, sir.

Q. The rates from the Atlantic seaboard to the Mississippi River points are separate rates from the rate from the Mississippi River points to the Missouri River cities?

A. Yes, sir.

Q. The system of rate making by which the rates run to one point and then other rates begin from that point is known as the breaking of rates?

A. Yes, sir.

Q. You may state why it is that the rates break at the Mississippi River?

A. Well, the lines from New York, for example, or from the At-

lantic seaboard have their own rates to St. Louis, have their own rails. It is the desire and we have got to arrange it some way to compete by upper Mississippi River crossings. Take the
 397 North Western Road, for example. They have no railroad to St. Louis. With a combination via St. Louis they would be out of business unless they had some arrangement to handle business through the upper Mississippi river crossings. While we have railroads from St. Louis we have railroad from other Mississippi River crossings and want to compete with the St. Louis routes.

Q. So the breaking of the rates at the upper Mississippi River crossings is the result of commercial and competitive conditions caused by the rates breaking at St. Louis?

A. Yes, sir.

Q. Is it a fact that this system of charging the specific class rates from Mississippi River points to Missouri River cities, like Omaha and Kansas City charging the same on all traffic has been in vogue and been the practice since the railroads have existed there?

A. Yes, sir.

Q. You may state what effect that system of breaking the rates has had upon the commercial development of St. Louis, Chicago and the business houses of those cities?

A. The St. Louis business has been built up on that basis, and the same might be said to be true about all the other points. While the rates do not break on Chicago, they come very close to it and their business is done on the basis of these rates, and always has been.

398 Q. What would be the effect upon the commercial situation and development of these cities if this system that has obtained so long should be changed and the railroads should carry goods taking class rates between the Mississippi River points and the Missouri River cities at a less rate when the goods originate at the Atlantic seaboard than that charged the public generally?

A. I think it would have the effect of transferring the business to the seaboard.

Q. Why?

A. It would give the seaboard a decided advantage in making the rates. That is through rates would be less than the rate to the Mississippi River or to Chicago or any of these basing points than the rate beyond, and there would be undoubtedly a margin in the rate there that would enable them to control the business.

Q. You may state whether it is the practice of the railroads at times to join with other railroads in making a through rate between given points by accepting as a proportion of a through rate for a specific haul a lower sum than the reasonable local rate for that haul?

A. It has been the practice to do that.

Q. Is that ever done except under the pressure of commercial necessity and competitive conditions?

A. I don't know where it has been.

Q. You may state why it is that a railroad is justified
399 in joining in a through rate and accepting a division of the
through rate for a specific haul less than the reasonable local
rate for that haul?

A. They generally do that, they either do that or else do not get
anything, one or the other. They can have a choice of letting the
business go or contending for it.

Q. What consideration would determine whether it would be
worth while to join and get the business or not?

A. I should say we would be justified in participating in a
through rate if we got anything more than the actual cost of hand-
ling the business.

Q. If your proportion of the through rate was only a small
amount more than the actual expense to you of hauling it, that
would be a clear gain over what you would have if you did not
participate at all?

A. Yes, sir.

Q. So that the basis of the consideration in determining whether
you would take that proportion or not is a basis that considers only
the actual outlay for that particular haul?

A. That is all.

Cross-examination.

By Mr. WALTER:

Q. As a general rule through rates measured by the per ton per
mile basis are less than the local business between two points
400 on a given railroad, isn't that true?

A. It may be and may not be.

Q. What is the general rule. Isn't it true that in making your
rates you fix the long haul rates at a less basis per ton per mile than
you do for the short haul business?

A. Yes.

Q. Isn't that the practice or system of rate making generally
adopted by railroads in this country?

A. The longer the haul the less the rate.

Q. Per ton per mile?

A. Yes.

Q. Every car that goes over your line of railroad between here
and Omaha to a certain extent wears on the physical property,
either rolling stock or road bed or both?

A. Yes, I suppose it does.

Q. Is it your idea that a railroad is justified in fixing a rate on
a large bit of traffic which moves continuously between two points
at the mere cost of the power used in hauling and the employees who
perform services upon that particular traffic?

A. That would depend entirely on circumstances. We would not
want to undertake to handle all of our business on that basis, no.

Q. I will ask you whether y-u are justified in hauling an impor-
tant portion of your business on that basis?

401 A. Well, I think we would be under certain circumstances, yes, sir.

Q. What proportion?

A. That I do not know. It is all owing to the circumstances. We might be compelled to haul a certain percentage on that basis. Either that or forego the business entirely.

Q. How large would the business have to be before you would cease to follow that practice in making rates?

A. That would be determined largely by the conditions that confronted us. I could not anticipate a proposition of that kind.

Q. When you do that, when you make a rate on a large and important proportion of your business at the mere cost of hauling, don't you have to recoup in an excessive degree from other traffic in order to make a profit in your general business?

A. I do not know that we do. It contributes towards the general expense and reduces that.

Q. Reduces the general expense?

A. Yes.

Q. You have left out of consideration entirely fixed charges, interest upon the investment, etc.?

A. All those things go towards making up this item.

Q. You consider all those things in making up your estimate of the cost of hauling?

A. Well, I don't know that we do, no.

Q. Do you or do you not?

402 A. I do not know what our fixed charges are. I do not know what our business is and don't know how to distribute it.

Q. Do you fix the rates of your road?

A. Yes.

Q. Without having this knowledge?

A. I cannot tell how the business is coming on, in what quantity and what proportion the drygoods business is going to be to the other business, or the lumber business or the cattle business or anything like that.

Q. From what do you determine a rate?

A. The question of competition fixes that largely and what others are doing.

Q. Are your rates solely based on competition?

A. I cannot give a different rate than anybody else.

Q. Are your rates based solely on competitive conditions without reference to the cost?

A. I would not voluntarily take any business that cost me more to handle than I would get for it.

Q. Let me ask you if figuring on what a rate shall be, what do you take into consideration in figuring the cost?

A. I am governed largely in making our rate, you might say wholly, by the rates of other railroads. There is not a local point on our railroad anywhere.

Q. Let me ask you if from your general information as to rate making conditions on other lines, the same rule obtains there?

A. I suppose it does, yes.

403 Q. Then rates are made without knowledge by carriers of the cost of hauling of particular traffic?

A. I think that is true largely.

Q. Then doesn't it resolve itself into this, that it is largely a matter of guesswork as Mr. Johnson said yesterday?

A. Well, the general results are figured on. For example, we want to know whether we have made money or lost money at the end of the year. We can tell after we are through.

Q. Can you locate that on any given traffic?

A. No.

Q. You say that the index of the system of rate breaking on the Mississippi River has been to build up St. Louis as a commercial center?

A. I think it has.

Q. You say also that Chicago has to a large extent profited from that same fact?

A. Yes.

Q. What is the rate from New York to St. Louis on first class?

A. Eighty-eight cents.

Q. From seaboard territory?

A. Eighty-eight cents from New York. New York is on the seaboard.

Q. What is the rate from St. Louis to the Missouri River cities?

A. Sixty cents, first class.

Q. That makes a total of how much?

A. Of \$1.48.

Q. It was until since the pendency of this suit \$1.47, wasn't it?

404

A. Yes, sir.

Q. Eighty-seven cents east of the River?

A. Yes, sir.

Q. What is the local rate into Chicago?

A. Seventy-five cents.

Q. What is the rate from Chicago to Missouri River cities?

A. Eighty cents.

Q. What is the total based on Chicago?

A. \$1.55.

Q. What is the difference between the rates based on Chicago and the rates based on St. Louis?

A. Seven cents.

Q. It was eight cents until a short time ago?

A. Yes, sir.

Q. St. Louis business has been built up on the basis of \$1.47 through to the Missouri River?

A. Yes.

Q. As against Chicago's \$1.55?

A. Yes, sir.

Q. How long were you at the Missouri River cities, at Omaha?

A. All told I was at St. Joseph and Kansas City and Omaha for seventeen years I think.

Q. How long ago did you leave Missouri River cities to come to Chicago?

A. It was in 1903.

Q. You have at all times been cognizant of the commercial conditions, competitive conditions as between the railroads for traffic at these cities?

405 A. Well, there was a period from 1883 to 1890 that I was located in Denver and I did not know really what was going on on the Missouri River.

Q. After 1890 you knew what was going on?

A. Yes, practically.

Q. Competition was very fierce among the carriers wasn't it, for that business from the seaboard?

A. All business there was competition for.

Q. I will ask you whether you can give me an estimate of the percentage of the rate on seaboard business of the first five classes destined for the Missouri River cities that was refunded to shippers at these points or at the points of origin?

Objected to by Mr. McHugh as incompetent, irrelevant, immaterial and not proper cross examination.

A. I cannot answer.

Q. Haven't you some idea?

Same objection repeated.

Q. There were large refunds were there not?

Same objection repeated.

A. I don't know that there were, no.

Q. Don't you know as a matter of general information that there were such refunds?

Same objection repeated.

A. No.

406 Q. Have you any reason to think that there were none?

Same objection repeated.

A. There were some refunds, yes. I don't know what they were.

Q. Wasn't it material as you understand it?

Same objection repeated.

A. I don't think so, no.

Q. Was not the refund paid to the carrier operating between Chicago and the Missouri River cities?

Same objection repeated.

A. It may have been.

Q. Isn't it true that it was?

Same objection repeated.

A. Not in all cases, no.

Q. We want to get your knowledge on this question and you must

have some information. Please give us just as well as you can your estimate from what you have heard from your employes and from the employes of other roads and from shippers?

Same objection repeated.

A. I could not give you an estimate of what money was refunded on this business.

Q. Give us your best judgment.

Same objection repeated.

A. On all the Atlantic seaboard business?

407 Q. Yes, sir, of the first five classes.

The same objection was repeated, and the further objection that the witness has already answered that he does not know, and that the estimate of a man who does not know is incompetent.

Mr. WALTER: He said he had some information.

Mr. ATWOOD: He said he knew there were refunds.

Mr. WALTER: Give us your best judgment?

Same objection repeated.

The WITNESS: Shall I answer?

Mr. McHUGH: If you want to and if you do not want to do not answer.

The WITNESS: I prefer not to answer.

Mr. WALTER: We will go to the court for a ruling. Do you decline to answer?

A. Yes.

Q. Or what ground?

A. I haven't got a fair idea. I could not give you a fair idea.

Q. You have knowledge of the conditions existing for a good many years prior to the passage of the Hepburn law, at these cities?

Same objection repeated.

A. Yes, sir.

Q. You were in charge of the traffic officials of your road at these points?

408 Same objection repeated.

A. At certain of the points, yes.

Q. At Omaha?

Same objection repeated.

A. Yes, sir.

Q. At Kansas City?

Same objection repeated.

A. No.

Q. St. Joe?

Same objection repeated.

A. At a certain time I was in charge of the business at St. Joe and Kansas City.

Q. When you were not who was in charge?

A. I went to St. Joe as General Freight Agent of the Kansas City, St. Joe and Council Bluffs road in 1881 and was there until 1883. I was responsible for it during the time I was there. After I left my successor was Mr. Swords.

Q. You had information brought to you by your employes as to what other roads were doing in the matter of refunds, did you not?

Objected to as before.

A. I never got anything very positive about what they were doing. It was a matter of guess work.

Q. Their information as best they got it was given to you?

409 Same objection repeated.

A. Oh, yes.

Q. On that you issued certain instructions and directed them to take certain steps to meet that condition?

Same objection repeated.

A. Well, I may have done so and may not.

Q. Did you or did you not?

Same objection repeated.

A. I may have done so in certain instances and in other instances I did not.

Q. You did in some instances?

Same objection repeated.

A. Yes, sir.

Q. Now I will ask you to state what those instances were?

Same objection repeated.

A. You are asking me to tax my memory about a matter that happened years ago. There was nothing to fasten itself particularly on my mind.

Q. Do you state here as a witness under oath that you have no information direct or indirect as to whether there were refunds upon Atlantic seaboard business of the first five classes going to the Mississippi River cities?

Same objection repeated.

A. I had some information in regard to it.

410 Q. What was that information?

Same objection repeated.

A. I cannot tell you. I knew that rates were being shaded and things of that kind, but I cannot tell you to what extent.

Q. What was the information that came to you as to the amount of this reduction?

Same objection repeated.

A. I don't know.

Q. What is your best recollection?

Mr. McHUGH: He says he has no recollection of the amount.

The WITNESS: You can know a thing and at the same time not know exactly what the facts are.

Mr. WALTER: Not exactly the facts. If you can give us the general situation it will obviate our having to get the detailed information.

Mr. McHUGH: He is not testifying as a guess.

Mr. WALTER: He has given opinions on other matters and he might give it in this.

The WITNESS: I cannot give you the information.

Mr. WALTER: Is it because you do not want to?

Objected to as before.

A. No.

411 Q. What is your recollection as to the percentage of the reduction in the rate on these five classes from seaboard territory?

Objected to as before.

A. It may have been ten per cent.

Q. Of the rate from Chicago to the river?

Objected to as before.

A. Yes, from Chicago to the river. Or it may have been ten per cent for the rate from New York.

Q. That would be 14.7 cents?

A. Yes, sir.

Q. Those refunds were not confined to a single shipper but to the general large shippers at these points?

Objected to as before.

A. I imagine that everybody did not get it.

Q. Not everybody, but men whose business was of large volume?

Objected to as before.

A. That rested entirely on the opinion of the railroad. Some railroads would think a man's business that did not amount to \$50 was just as valuable as somebody else's that amounted to five thousand.

412 Q. Isn't it a matter not only of your own knowledge but of general information among the railroad men operating roads into these cities that there was a substantial refund on a large proportion of Atlantic seaboard business of the first five classes during the period extending up to the time of the Hepburn laws enactment?

Objected to as before.

A. I do not know what other roads were doing. All I know or have any knowledge of is what we were doing.

Q. Your own rate then?

Objected to as before.

A. I should not say it was a substantial reduction in the rate. There were rumors and reports of all kinds of rates being manipulated. Sometimes they were true and sometimes they were not.

Q. Isn't it a matter of fact that they were largely true?

Objected to as before.

A. Well, they were true of some railroads and not true of others.

Q. But if the roads wanted the business they had to meet these rates, didn't they?

Objected to as before.

A. Sometimes they did and sometimes they did not.

Q. Your company have records as to what refunds were made have they not?

Objected to as before.

A. I do not think they have, no.

Q. Haven't they any papers at all that would show that?

Objected to as before.

413 A. I don't think so.

Q. What officials made the refunds, if they were made by your company?

Objected to as before.

A. That is pretty hard to tell.

Q. What is your understanding as to who would be charged?

Objected to as before.

A. If I ordered a refund I would be the party to make the refund.

Q. You did make orders for refund?

Objected to as before.

A. I did in some cases, yes.

Q. They averaged about how much per cent of the rate?

Objected to as before.

A. I answered that question. I told you about ten per cent I thought.

Q. Of the New York Missouri River rate?

Objected to as before.

A. About that.

Q. Is there a record of those transactions?

Objected to as before.

A. I don't think so.

Q. How were they accounted for?

Objected to as before.

414 Q. How were they accounted for on your books?

Objected to as before.

A. The same as any other transaction.

Q. What books would show that?

Objected to as before.

A. The claim books or books of that kind.

Q. Isn't there a separate book kept for this class of transactions?

Objected to as before.

A. Not that I know of, no, sir.

Q. Was it by check?

Objected to as before.

A. Refunded by check.

Q. Often made by cash?

Objected to as before.

A. I don't think it was.

Q. Often in the guise of commissions for securing business?

Objected to as before.

A. It may have been.

Q. Do you know what proportion of the Atlantic seaboard business of the first five classes your road has carried on an average during the past ten years?

A. I haven't the faintest idea.

Q. Do you know what road gets the larger portion of it?

415 A. No, it varies.

Q. Is there a pool by which this business is divided up among the roads?

A. There is not.

Q. Is there any understanding, express or implied, or gentlemen's agreement whereby the various roads operating out of Chicago to Mississippi River crossings or St. Louis to the Missouri River cities divides this business?

A. No, everybody gets what they can.

Q. Haven't you any information as to how successful you have been in getting your share of this traffic?

A. Well, we think we get a fair share of the traffic. We don't think we get what we ought to have.

Q. That is largely true of all traffic, isn't it?

A. Yes.

Q. Do you say that all your records which would show the refunds have been destroyed?

Objected to as before.

A. I do not think there is any record of it.

Q. What has become of it?

Objected to as before.

A. I don't know. I was not the custodian of it.

Q. Why do you say that there is no such record?

Objected to as before.

A. Because I think so.

Q. What makes you think so?

416 Objected to as before.

A. I have been——

Q. So informed?

Objected to as before.

A. So informed, yes.

Q. By whom?

Objected to as before.

A. I do not know that I could put my hand on the man. The general understanding is that there are no records.

Q. We will ask you to give us the names of the men to whom these refunds were made?

Objected to as before.

A. I cannot do it.

Q. Can you give me the names of anybody

Objected to as before.

A. No.

Q. Not a single soul?

A. (No answer.)

Q. What is the answer?

Objected to as before.

A. I do not think I can, no.

Q. Did you yourself directly or through some one whom you directed make any refunds to Burnham, Hanna Munger Dry Goods Company on any of this first five classes of freight from seaboard territory.

Objected to as before.

417 A. No.

Q. Swoffard Brothers Dry Goods Company?

Objected to as before.

A. No.

Q. Smith-McCord-Townsend Drygoods Company?

Objected to as before.

A. No.

Q. William Barton, K. L. Barton, and G. A. Barton, corporation as Barton Brothers?

Objected to as before.

A. No.

Q. Or any one for them?

Objected to as before.

A. No, they were not shipping over our railroad.

Q. Maxwell-McClure-Fitts Dry Goods Company?

Objected to as before.

A. No.

Q. In each one of these questions I am including any one for them. F. A. Faxton and J. A. Gallagher?

Objected to as before.

A. No.

Q. Ellett-Kendall Shoe Company?

Objected to as before.

A. No.

Q. McPike Drug Company?

418 Objected to as before.

A. No. You can take your whole list. I never ordered a refund to any one of them.

Q. You have read the names?

Objected to as before.

A. I know who they are.

Q. You never made a refund to any of them?

Objected to as before.

A. No, sir.

Q. By whom were these refunds ordered?

Objected to as before.

A. I don't know.

Q. You said a while ago that you did order refunds?

Objected to as before.

A. I did not say I ordered refunds to those people.

Q. But on this business. Now you say it was not to any of those named in the intervening petition?

Objected to as before.

A. Yes, sir.

Q. Now, I will ask you to whom they were made?

Objected to as before.

A. They were not made to any of those people.

Q. I am asking as to what particular persons?

Objected to as before.

A. I told you I do not remember. I do not burden myself
419 with those things, to carry them around for a period of years.

Q. Don't you have a very vivid recollection of what transpired in this regard?

Objected to as before.

A. No.

Q. Is it true that the general average refund was between ten and thirty per cent of the rate?

Objected to as before.

A. I do not know.

Q. Haven't you heard that?

Objected to as before.

A. I have heard all kinds of things but I don't know anything about it.

Q. Haven't you received some information to that effect which to you came from a substantial and reliable source?

Objected to as before.

A. No.

Q. Will you give us the names of your employes in the Traffic Department at Missouri River cities who had charge of the matter of securing business and arranging refunds that actually came in their jurisdiction?

Objected to as before.

A. I do not exactly understand your question. We have
420 nobody on the Missouri River or any other place that is especially charged with getting business and refunding money.

Q. But what persons in your employ at these Missouri River cities did look after this matter as well as others when such refunds were made?

Mr. McHUGH: He can answer that he will give you the list if he is advised by counsel to do it.

Mr. WALTER: I ask that he do it.

The WITNESS: I will give the list if the counsel advises me to, yes.

Q. At New York, what man there or men would arrange for these refunds if any were made?

Objected to as before.

A. I will make the same answer I did to the previous question.

Q. Then you decline to give me the names at either of these points or any of them?

Objected to as before.

A. Yes, sir.

Q. You know the names

Objected to as before.

A. I know the names of our employes there.

Q. And you decline to give me their names?

Objected to as before.

A. Yes, sir.

421 Mr. McHUGH: Unless advised by counsel.

Mr. WALTER:

Q. In securing business at Chicago for shipment to points west there is quite a bit of competition isn't there?

A. Yes, sir.

Q. And the carriers who operate from Chicago to Missouri River cities and beyond have a regularly organized force for soliciting business?

A. Yes, sir.

Q. And that force costs quite a sum of money doesn't it?

A. Yes, sir.

Q. Can you tell me about how much in a year to the Burlington?

Objected to as before.

A. It costs in the neighborhood of \$20,000 a year to solicit business here in Chicago.

Q. That is local business from Chicago west?

Objected to as before.

A. Yes, sir.

Q. On a great deal of business which originates at Chicago and is going to points west there is a terminal charge here which your company has to pay, isn't there?

A. There is a charge for collecting freight. That is the men that are there to load it, they have to put it in the cars, and so forth.

Q. There is switching service that you have to pay isn't
422 there?

A. Not on New York merchandise. That is taken to the house and loaded there.

Q. Isn't it true that on the first five classes of traffic originating in Chicago in some instances you pay switching charges based upon the movement of the car?

A. Yes, we do in some instances. In a great many instances we do not.

Q. Sometimes there is a lightering service isn't there?

A. Yes, sir.

Q. For which you pay?

A. Yes.

Redirect examination.

By Mr. McHUGH:

Q. The conditions and the business to the Missouri River concerning which you have been asked, so far as you are acquainted with that apply to all business as much from Chicago and St. Louis as from the seaboard?

A. Yes, sir.

423 FRANK P. EYMAN, produced as a witness on behalf of the complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. McHUGH:

(Mr. Walter repeated the objections made to the testimony of the witness Johnson, and it was agreed that this objection should have the same force as if here repeated, and should apply for all the defendants and intervenors.)

Q. Your full name, please?

A. Frank P. Eyman.

Q. And what is your business?

A. First Assistant General Freight Agent of the Chicago & North-Western Railway.

Q. What railroad experience have you had, Mr. Eyman?

A. About thirty-five years.

Q. How much of that in the middle west?

A. Practically all in the middle west. Twenty-eight years of that service I have been with the Chicago & North-Western Railway Company.

Q. Located in——

A. At Chicago and Milwaukee.

Q. You are familiar, Mr. Eyman, with the rate situation as it exists and has existed between the Mississippi River and the Missouri River cities?

A. Yes, sir.

Q. The rates on class merchandise, from the Atlantic Seaboard to the Missouri River cities, are made up by the rates from the seaboard to the river, the Mississippi River, and the rate from 424 the Mississippi River to the Missouri River cities?

A. The rates in the first place are made by a combination of the rate to St. Louis and the rate from St. Louis to the Missouri River.

Q. Without repeating what has been testified to, the Eastern Railroads extended their rails to St. Louis?

A. Yes, sir.

Q. They reached the Mississippi River then by a continuous system of rails?

A. Yes, sir.

Q. And they fixed their rate to St. Louis?

A. They fixed their rate to St. Louis.

Q. And the railroads beginning at St. Louis and going west established their rates from St. Louis west to Kansas City?

A. Yes, sir.

Q. And Missouri River cities?

A. Yes, sir, that is the statement of the——

Q. And that forced the roads running north of St. Louis to equalize by establishing the same rate to the Mississippi River at the points at which these other roads crossed the river?

A. Yes, sir, through the upper Mississippi River crossings. The St. Louis combination is equalized on the part of the Eastern lines up to the Mississippi River, and the lines west of the Mississippi River, making the same rate through all of the upper crossings from St. Louis to Dubuque inclusive.

Q. You say the lines west of the River. You mean the 425 lines west of Chicago?

A. The lines west of Chicago I should say.

Q. That was a commercial competitive necessity?

A. Absolutely fixed by the St. Louis combination.

Q. Now these rates between the Rivers on class merchandise are

not joint rates, or rates to be applied to through business, but are rates applied on all traffic?

A. They are applied on through business from the seaboard and from all territory east, but they are also applied on the local business which originates at the Mississippi River crossings to the Missouri River.

Q. Yes. In other words, they are not specially established to be applied to through business, they are established for all business?

A. Yes, sir, established for all business.

Q. Now speaking of the sixty cent scale between the two——

A. The sixty cent scale between the Rivers.

Q. Now, that is the system known as the breaking of rates?

A. That is the system of breaking the rates at regular recognized basing points.

Q. And as used it flowed as a commercial necessity from the situation at St. Louis, where the eastern lines end and the western lines begin?

A. Yes, sir.

Q. Now what effect has that system had on the commercial development of the cities of St. Louis and Chicago?

A. It has had to my mind a very beneficial effect. It has
426 enabled the middle west—that is, it has enabled the Mississippi Valley, Chicago and St. Louis, to grow and thrive on the basis that was established, making an equalization of the rates in and out of those points. Now as Mr. Crosby explained, on some classes the rates do not equalize on Chicago at the present time.

Q. Explain how, on what they do not equalize, and on which classes Chicago is at a disadvantage, and on what classes Chicago has an advantage.

A. On first and second class the rates break in favor of St. Louis. On third class they are about an even break, on fourth class the rates are in favor of Chicago to the extent of one cent per hundred pounds. On fifth class there is an absolute equalization of the rates. In other words, the only classes upon which the rates do not break the same on Chicago as on St. Louis are on first and second class freight.

Q. First, second and fourth?

A. Well, yes, and fourth, but fourth class is——

Q. Chicago has an advantage?

A. Chicago has an advantage.

Q. Of one cent a hundred pounds?

A. Over St. Louis.

Q. And on the first and second, a disadvantage of seven?

A. Yes, sir.

Q. Now what would be in your judgment the result upon the commercial conditions of Chicago and St. Louis if this system of
427 rate making, breaking of the rate to the Mississippi River, was abolished, and the shipments originating at the Atlantic seaboard were to be carried between the rivers at a less rate than the rates that obtained for others?

A. It could not be otherwise than injurious, and if carried out to

its logical conclusion would be disastrous, to my mind, because the business has been, as I said before, built up and developed upon the present basis of rates, which is an absolute parity all around. Now the placing of the handicap of the difference that is established between the rivers on business which originates in seaboard territory as compared with the business that originates in the central freight association territory or Chicago or St. Louis, of nine cents per hundred first class and so on down, would be a very serious handicap to business in this section of the country to my mind. I don't see how it could be otherwise.

Q. Now Mr. Eyman, suppose instead of an absolute reduction of nine cents and so on down through the classes between these rivers in favor of the seaboard alone, the system of rate making should be established upon the principle that the longer the haul across the continent the lower the rate per ton per mile, so that the rate would taper down from the point of origin regardless of the break of the railroads, what effect commercially upon the cities in the St. Louis and Chicago and Central Freight Association territory, which
428 is intermediate between the river and the Atlantic seaboard territory, would that system have?

A. Why, it would be very injurious and disastrous to the intermediate territory and the business interests located in that intermediate territory.

Q. Now what do you mean by intermediate territory?

A. I mean the territory west of the seaboard territory and east of the Mississippi River; the entire territory in that section would be affected by such a proposition. In fact, if it is carried out to its logical conclusion, the only people who would be benefitted would be the people who ship from one extreme to the other extreme.

Q. And what effect would it have in the way of forcing business to the end of the rails, to the east?

A. I believe that it would necessarily follow that the business would be forced to the extreme points, that is, to the east, from the east to the west, and to the far west.

Q. In other words, the business would go where it could be done with the greatest advantage?

A. It would follow the lines of least resistance, naturally.

Q. Now Mr. Eyman, railroads do sometimes join in making a through rate and accept for a certain haul less than the reasonable local rate for that haul?

A. By force of competition or circumstances we sometimes
429 do that. We never make a joint rate unless it is brought about by some such condition as that, to meet the rate that is in effect by a direct line, or some such a condition as that which forces the establishment of a joint rate.

Q. Now in determining whether you are justified in joining in a through rate to meet the rate fixed by the direct line, in deciding whether it is profitable for the company to take it, what do you take as the basis to set against the revenue you get?

A. Well, we figure that if the proportion which accrues to our line is sufficient to pay the cost of hauling the freight, that we would

be justified in joining some other line in meeting the rates and conditions that are fixed by the direct line or competition.

Q. That would entail no loss on the company at all?

A. That would entail no loss on the company, and we therefore know—

Q. No burden upon it?

A. No burden upon the company or upon shippers in other directions.

Q. And any sum that you receive from that traffic, over and above the simple actual outlay that is involved in the haul and the expense incident to it, would be a clear net gain?

A. That is the way it would appeal to me.

Q. In other words, you would not have the business if you did not do it?

A. No, sir.

430 Q. That is, you would not get the money?

A. Either do that or forego entirely the traffic.

Mr. McHUGH: You may examine the witness.

Cross-examination.

By Mr. WALTER:

Q. Mr. Eyman, were you ever located at Omaha?

A. No, sir.

Q. You have not been located at any of the Missouri River cities?

A. No, sir, never.

Q. And are not familiar with the local conditions there?

A. Only in so far as I know them from general supervision of the traffic of the Chicago & North-Western Road.

Q. You only reach Omaha, don't you, and Sioux City, your road?

A. We reach away beyond Omaha.

Q. I mean Missouri River Cities?

A. We don't reach direct the lower Missouri River crossings, that is, such as Kansas City, St. Joe and those points, we don't reach those points at all, but of course our line extends away beyond the Missouri River, through Omaha and through Sioux City and through Blair.

Q. Now Mr. Eyman, what do you mean by extending the order of the Commission to its logical conclusion?

A. I mean that if it is figured that a through rate, regardless of natural basing or breaking points, which is the measure
431 of making rates so far as railroads are concerned, if that is to be ignored by the establishment of through rates, then following that out to its logical conclusion, you cannot stop at one point you can't stop at the Missouri River and you can't stop at some point west of the Missouri River, but each community and each point would be entitled to a through rate to a point beyond, which would be less than the combination of locals on any basing point. That is what I mean.

Q. Once you begin making a joint rate or a rate less than the sum of the locals, it must be carried out on all traffic?

A. Oh, no, I did not say that, I did not mean that. Once you

make a joint rate, regardless of the basing points or regardless of the conditions, then I say the logical conclusion would be to carry it out. We make joint rates, as I have explained, not because we want to, or not because that is the system in making rates. Now the standard of rate making to my mind is the local rates, there is the standard, the fair, reasonable basis of rates, and when you depart from that, you depart from that because conditions are fixed for you or competition is fixed for you by some other line, or some other condition that you cannot control. Then you may have to depart from your system of making your rates absolute on breaking points or basing points.

432 To illustrate that, when rates were first made from the seaboard to this western territory, the roads were built from New

York to Buffalo, the rates broke on Buffalo, broke on Pittsburgh, and afterwards they were extended to Chicago and the rates broke on Chicago. Those were natural breaking points. I claim that the natural breaking points are the rivers or the lakes, as is illustrated now by the breaking of the rates on the Mississippi River, by the breaking of the rates on the Missouri River, by the breaking of the rates on St. Paul, by the breaking of the rates on the Ohio River, and all through the entire territory you will find that the natural breaking points, everything else being equal, are maintained to this day. It is not a question of establishing through rates, because there are continuous lines—or I mean because there are railroads built into the new territory, but when one road builds beyond that first breaking point to another breaking point, or to another basing point, then the rate that becomes—although it becomes the local rate on their own line, that forces other lines who do not have rails between those two points to establish a joint rate. That is the system in making the joint rates. It is not a question because it is a long distance that you make a joint rate.

Q. Isn't it true, Mr. Eyman, that the more breaking points you have, the more local rates you can put in as component factors in the through rate?

433 A. Well, I don't know that I understand that question.

There are natural breaking basing points that business has to be handled through. It has to be rehandled at that point, no matter whether it is a through rate or whether it is a local rate, the business has to be rehandled and transferred and taken care of at those points. Those are your natural breaking basing points. And that has been the basis upon which the industrial life of this country has been built up. That is, that is the basis upon which Chicago has been built up; that is the basis upon which St. Louis has been built up; that is the basis upon which Kansas City has been built up; that is the basis upon which Omaha has been built up. Now, then, a complete revolution of that system of making rates would of course to my mind work incalculable injury to those points, could not help it.

Q. Now Mr. Eyman, a natural basing point or breaking point as you put it is where it is necessary to transfer freight and perform a service I believe you said?

A. The end of the natural breaking point would be the terminus of the line that reaches that point.

Q. Now, didn't you say it was where there was a transfer necessary?

A. No, I did not say that.

Q. Now there is no transfer at the Missouri River so far as your road is concerned, is there?

A. Why, the Mississippi river business—that is, there is a
434 transfer at the Mississippi river, but the Missouri river business so far as our line is concerned is transferred at Chicago, because there is where we have the facilities for taking care of the business. Now Chicago is the breaking point, Chicago is the natural breaking point for the North-Western Road, and if it was not for a condition that is fixed for us at St. Louis, that is where our rates would break, at Chicago, not at the Mississippi River at all. But we are forced by reason of the competition, just as I stated before, that is why we depart from the principle of making Chicago the breaking point. I think Chicago ought to be the breaking point. I think Chicago ought to be the basing point, but my thinking so don't make it so, because the eastern lines have extended their roads up to the Mississippi river at St. Louis. That makes necessary the extending of the through rate, the through joint rate, in connection with the eastern lines up to the upper Mississippi river crossings in connection with our line, because we don't reach St. Louis.

Q. Now let us go back to the question I ask, Mr. Eyman, and I wish you would make your answers responsive and not repeat so much. It is in the nature of a speech.

A. I will try to do that.

Q. Now let me ask you, didn't you say a moment ago that the true principle upon which the basing system, the breaking
435 point system of rates was made, was that at that point a transfer was necessary?

A. No, I did not say that. No, I said that the true principle upon which rates should be made would be at the natural breaking basing point. I did not say that it was where the transfer would naturally be made.

Q. Well, there is no such transferring of your traffic at the Mississippi river, is there, on this Atlantic seaboard business?

A. I have explained to you that that transfer is made at Chicago on account of the facilities.

Q. May you not answer me yes or no and not qualify it, Mr. Eyman, we can get along so much faster if you will.

A. Why, we do transfer freight at the Mississippi river, yes.

Q. Going to Missouri river cities from the seaboard?

A. Yes, sir.

Q. Why, because a car breaks down?

A. No, because it might reach us through some junction that would make it necessary to transfer either at that junction or at the Mississippi river, and then the Mississippi river might be the most convenient transfer point.

Q. Now give me an example of just such a situation.

A. Well, from Peoria, for instance, we don't have any terminals at Peoria, and we handle that business through a belt line. Now

436 it might be that we would be forced to transfer that freight on our own line at what we call East Clinton, or at the Mississippi river.

Q. Now isn't it true that no Atlantic seaboard business of the first five classes is delivered to you at Peoria?

A. Isn't it true? No, it is not true.

Q. Now what road delivers to you any considerable proportion of that business?

A. Why, the Big Four, the Vandalia, the Pennsylvania, the Lake Erie & Western, all of those roads that lead from Peoria to the Atlantic seaboard deliver us freight for the Missouri river at Peoria.

Q. Then that business does not go through Chicago?

A. That business does not go through Chicago, no, sir.

Q. Now, is there any tariff which names a rate on traffic from the Atlantic seaboard territory to Peoria and there delivered to you?

A. Yes, sir.

Q. Will you give me—

A. Why, the proportional rate which applies from the seaboard to the Mississippi river, applying through the Peoria gateway in just exactly the same way as it applies through the Chicago gateway, Mr. Walter?

Q. Is it the same tariff?

A. Yes, sir it is the same tariff.

Q. Gives the same rate, gives an eighty-seven cent rate to Chicago?

A. Yes, sir, that applies through the Peoria gateway.

437 Q. Now Mr. Eyman, do you receive any material amount of traffic at Peoria from any of these lines which originate at Atlantic seaboard territory and is destined to Missouri river cities?

A. I don't know the percentage of business that we receive from those lines at Peoria, but we do receive freight originating in the seaboard territory and destined to the Missouri River at Peoria, yes, sir.

Q. Isn't it a very small percentage, and an exception to the rule?

A. Why, I said before, I don't know the exact percentage, I don't know that that cuts any figure, but there is a considerable tonnage of that business handled by us through the Peoria gateway.

Q. Did you receive that considerable proportion at Peoria for the first time?

A. Yes, sir.

Q. Now will you say that that is as much as twenty-five per cent. of the seaboard business?

A. I would not undertake to say what the percentage is; I don't know.

Q. Would you say it is as much as ten per cent.?

A. I say I don't know.

Q. Is it as much as five per cent.?

A. I believe I have answered that question, Mr. Walter, there is no use in bringing the changes on the percentages when I say

438 that I don't know what it is. I will say, however, that it is a considerable amount of tonnage that we receive.

Q. Now, what is a considerable amount in your judgment?

A. Why, I don't understand to say what that is.

Q. Now you must have had some facts in your possession when you made that statement?

A. Yes.

Q. Now what are those facts?

A. I know that we get business there. I know we have a tariff there, and we would not operate a tariff through the Peoria gateway unless there was some necessity for it, and when there is a necessity for it there must be some business moving on it.

Q. Do you mean to say that every time you have a tariff that you also receive business under that tariff?

A. If we don't we cancel the tariff pretty quick.

Q. You don't have any tariffs between points where you handle no traffic?

A. We don't intend to have tariffs where there is no business. Tariffs are made to fit the business, to carry the business, and if there is not any business there is no necessity for a tariff. That goes without saying.

Q. The tariff has first to be made, doesn't it?

A. Why yes, the tariff has first to be made, but it is not the intention of any road to operate any tariffs. It costs money to keep
439 tariffs in effect. It is not the intention of any road to operate tariffs unless they intend to handle business on them.

Q. Now your tariffs are printed by trunk line committees and other committees in which other roads are parties?

A. Some of them, and some of them are printed by our own company.

Q. Now this particular tariff you are talking about, all the expense there is in the printing the "Chicago & North-Western Railway Company" on that tariff, isn't it?

A. No, that is not the only expense, no. The expense to us is the proportionate figurings and the regular division of the regular expenses of our tariffs. It may be more and it may be less.

Q. But putting the Peoria gateway in a tariff would not involve a single cent's extra expense to you when there is a large number of points covered by the same tariff?

A. Perhaps not.

Q. No. Then it is not a question of expense, the taking in or out of a tariff of that sort. Now then, Mr. Eyman, isn't it true that your company does participate in joint tariffs on identically the same five classes of traffic originating at seaboard territory, passing through
440 the identical gateway at Chicago over your lines, through the Missouri river cities, to points beyond, on a joint through rate?

A. Not as a general proposition.

Q. No?

A. No.

Q. Don't it on transcontinental business?

A. Yes, sir, it does.

Q. On Spokane common points?

A. Yes, sir.

Q. Montana common points?

A. Now let me explain.

Q. Texas common points?

A. Well, not Texas common points, no, sir.

Q. Oklahoma common points?

A. No, sir, we don't participate in that business. We do on trans-continental business, we do on Montana common point business, because we establish those through rates through the Missouri river gateway, because the basis is fixed through some other gateways and it is necessary for us to join in those other rates, to be able to participate in the business. We don't establish those joint through rates because of the fact that there are rails out there. We participate in those joint rates because they are fixed, the conditions are fixed for us, the competition is fixed for us. Then we join in the through rates or else we forego the business.

Q. Now in handling that business you handle it in the same trains and over the same line of railroad and with the same employes that you handle the Atlantic seaboard business going only to the
441 Missouri river cities?

A. I think that is true.

Q. In fixing what your rates are do you take into consideration the depreciation upon the property used, fixed charges, interest, taxes, and other similar expenses?

A. Well, in fixing—I say right here that rates are fixed largely by competition, where the railroads have the right to make them. The railroad men nowadays don't have much to say about the fixing of rates, they are either fixed by the State Commission or the Interstate Commerce Commission or in some other way, but where the railroads do fix the rates they are fixed either by your competition, or in your local territory they are fixed on what we consider a fair and reasonable basis, that is, a basis which will pay to the railroads a reasonable return on the investment, and all of them, and still allow the maximum amount of tonnage to move.

Q. Now let me ask you, in figuring out what you term cost of hauling the freight what do you consider?

A. We take all the items that might be an expense against the company into consideration. At the same time, we can't tell—no railroad man can tell what it costs to handle any specified or certain business, any certain commodity or any certain business. That never has been determined yet. The Interstate Commerce Commission would pay a good deal of money to any man who would be willing to figure that out for them. It is a guess on our part, as Mr.

442 Johnson says, to a very large extent, just the same as it is a guess on the part of the Interstate Commerce Commission when they fix the rate.

Q. Now isn't it true that in making your guess you consider the financial return to your property?

A. We do this, Mr. Walter—

Q. Now I want to know whether you do that?

A. Not in fixing the rate by itself in all cases, because as I say, the competition might force us to make a rate which would be very

much lower than we would figure that we ought to be allowed to earn on that business. But at the end of the year we find out by rounding the whole business up, whether we have made a reasonable profit for the handling of our business.

Q. Now if you find that you have not made that reasonable profit which you think you ought to have——

A. Then we undertake to analyze the reason.

Q. Now then, do you go to some particular commodity and see whether it has borne its proper share?

A. We go to all commodities and see whether the rates that are fixed on those commodities are too low or too high, according to our opinion of what is too low and too high, and we adjust them accordingly if we can.

Q. You guess, isn't that just what it amounts to?

443 A. We do just exactly what the Interstate Commerce Commission do when they fix a rate.

Q. Let me ask you if there is not this difference, that the Interstate Commerce Commission is a tribunal organized to look after the rights both of the shipper and the carrier, while your corporation is organized for profit?

A. That is the difference, of course.

Q. Then there is a difference in the viewpoint, isn't there?

A. Well, there is always a difference in the viewpoint in those things.

Q. Now let me ask you this, is it true that the joint rate is only made as a result of competition?

A. I believe that is mainly true, yes, sir.

Q. What do you mean by meanly true?

A. I know it is true as far as the North-Western Road is concerned. We make no joint rates except such as are forced by competition.

Q. Is it not true that the joint rate is a less rate per ton per mile than the local rate?

A. Oh, no, that is not true. We have a great many joint rates that are on a higher basis per ton per mile than our local rate. For instance, our rate from Chicago to Denver, Colorado, is on a higher basis of rate per ton per mile than any of our local rates in local territory, so far as I am able to figure. Now that is because the conditions are different, Mr. Walter. The rates fixed—the density

444 of traffic and all that west of the Missouri river, the rate through to Denver is a combination of locals on the Missouri river. It is governed, however, by a through joint tariff. The rate fixed west of the Missouri river is on a very much higher basis than the rate fixed east of the Missouri river. Therefore that joint rate fixed upon a combination of locals on the Missouri river is a higher rate per ton per mile than our rates east of the Missouri river, our local rates.

Q. Now let me ask you if I understand you correctly that this is the situation, the per ton per mile rate on traffic which you haul from here to Clinton is much less for each mile in that distance than

the per ton per mile rate on traffic which passes from here through Clinton to Denver?

A. Let me get that point.

(Last question read to witness.)

A. If you put that from here to Omaha or Council Bluffs—

Q. That local rate is from here to Clinton.

A. Well, it is local rate from here to Council Bluffs. Now when you take a distance of only a hundred miles, then your illustration would probably not work out, but a local rate might be a rate for a hundred miles or it might be a rate for five hundred miles.

Q. Didn't you say that the lower is greater than any
445 local rate?

A. Than any basis of local rates. I will amend that by saying that to points in a short distance of the terminals, where your terminal expenses have to be taken into consideration there, just the same as they do on the long hauls, then that might not be true.

Q. Now there is no terminal expense at Clinton, is there?

A. Terminal expenses at Chicago. Why yes, terminal expenses at Clinton also. There is terminal expenses wherever you handle business.

Q. Now, then, to get back to what you said a moment ago, do you mean to say in this record that the per ton per mile rate on your Denver business is greater than the per ton per mile rate on local business of the same character?

A. I say on a large percentage of our local business, yes, sir, I do.

Q. Of the same class?

A. Of the same class, yes, sir.

Q. Now isn't that contrary to the general rule that obtains in the transportation—

A. I don't think so. Now if you will put it this way, that where you have a long haul—leave out your joint rate proposition—all the rates on long haul business, other conditions being equal, the rates per ton per mile are less than your rates on your short haul business, I will agree with you, that is right.

Q. All right, that is all I want to ask you.

446 A. But your joint rate has nothing to do with that.

Q. Now the joint rate,—the fact that it is a joint rate don't affect the nature of the services performed by you or rendered to the shipper?

A. Why yes—no, it don't affect the rate to the shipper, but it affects the service so far as we are concerned, because every time that you transfer freight from one road to another you add to the expense of handling that freight. You can't transfer a car of freight from one line to another through a transfer or switch track without some additional expense.

Q. Now just let me ask you right now, what additional expense do you have to bear when a railroad at a given point A puts on the transfer track a carload of traffic going beyond?

A. We have to switch that car from that transfer track into our train.

Q. If it was on a side track you would have to also switch it and put it in, wouldn't you?

A. If it was laid on our side track?

Q. Yes.

A. Yes, sir.

Q. The same identical service is performed, isn't it?

A. No, not the identical service, because there one road brings that in and switches it on to that track, that is one service. The other road takes it off of that track and switches it into its train, and that is another service. You have a double service.

447 Q. But your company does not render the service of putting it on to the transfer track?

A. You only take it off. You put this question, so far as the joint rates is concerned, if there is any extra service as against the local service. Now there is an extra service. It does not make any difference whether it is performed by our company or some other company. It is performed by the joint lines. Then it is an additional service over and above the service on the local business.

Q. But the part which pays you for your service is not received by the carrier that performed another service prior to this delivery to you?

A. No, that is true.

Q. Now Mr. Eyman, take for the purposes of illustration that a fair profit on the business of the carrier is six per cent.?

A. I would not say that is a fair profit.

Q. Well, ten per cent. for the purposes of illustration, ten per cent. or twenty-five per cent. When you haul twenty-five per cent. of your traffic at the mere cost of hauling, don't you throw on the other seventy-five per cent. of traffic the necessity of making up the proportion of the income of the ten per cent. which that should have earned for itself?

A. No, I don't figure it that way. For instance, if we haul freight between the Chicago and the Missouri river at actual cost of hauling that freight, that does not add anything to the burden
448 of the other freight. In fact I think that it reduces the cost to the shippers of other freight. If we——

Q. Now wait just a minute.

A. It cost us——

Mr. McHUGH:

Q. On a through haul?

A. On a through haul. It costs us just as much to haul a train of twenty cars from here to the Missouri river practically as to run a train of twenty-five cars. Now, if we earn out of that twenty-five cars—say on five cars we earn the actual cost of handling those five cars, that does not add anything to the burden of hauling the other twenty.

Q. Let me ask you if the shipper who sends the twenty cars is not entitled to the same identical treatment as the man who sends you the five cars?

A. No, because figured on that basis the railroad companies could not do business at all. You have got to have a profit or you

can't do business, and you have got to have a reasonable profit or you can't do business. Now it has been decided by the courts and by the Interstate Commerce Commission that it is no burden on another shipper if the railroad company don't handle business at an actual loss, that they are entitled to handle business——

Q. Let me ask you what you mean by an actual loss?

449 A. I mean that the cost of handling that business would be greater than what you received.

Q. That is, without taking into consideration the depreciation, amount invested, taxes, and fixed charges of all kinds?

A. I should say so.

Q. Now, then, let me ask you again to go back to the illustration you gave. If there are twenty-five cars in a train, all of the same class, each one of those cars should bear its proportion of the total cost, shouldn't it?

A. All conditions and circumstances being equal, yes, sir, but otherwise not.

Q. Well, with them all equal. Now, then, if they should be equal, and you take five of those cars and reduce the proportion which they should pay, don't you thereby add to the twenty?

A. We don't do that.

Q. No, but isn't that the effect?

A. Why, that would be the natural effect provided any such thing as that happens, but it don't. So far as I know there is no such condition as that in transportation service.

Q. In other words, the theory is different from what you apply in practice?

A. No, your statement is different from what we apply in practice.

Q. Yes, yes. Now then,——

A. There is no theory about it.

Q. Do you mean to say that this sixty cent rate is any
450 proportion of a through rate?

A. I did not say that.

Q. Is it or is it not?

A. It is. From the upper crossings, the sixty cent rate, to the upper Missouri river points—I don't know about the Southern Missouri or Southwestern Missouri river points—but from East Clinton to Omaha for instance in connection with our line the rate is a proportional rate. Now let me explain why that is so. The rate up to the Mississippi River is a proportional rate. You could not apply a local rate in connection with the proportional rate legally. You would have to have a proportional rate west of that in order to make what is called a through rate, and therefore it is necessary, although the factors are exactly the same—our local rate from Clinton and Council Bluffs and Omaha is sixty cents, our proportion from east Clinton, which is the east bank to the Missouri river is sixty cents. But the tariff covering the business originating east of the Indiana and Illinois State line, not only seaboard but all what we call seaboard and Central Freight Association territory, is carried as a proportional rate, to match with the proportional rate that

is carried by the eastern lines up to the Mississippi River, thereby making an application of the local rate through to the Missouri River, not a through tariff but a through rate.

451 Q. Now Mr. Eyman, take for a moment your statement that intermediate territory is sacrificed by this reduction between the rivers?

A. Yes, sir.

Q. Is there any traffic of a material amount of the same class going into the Missouri river cities competing with the seaboard? I want to know your knowledge.

A. Yes, sir, we handle more drygoods from Chicago locally to the Missouri River twenty times over than we handle from the seaboard, the Chicago & North-Western Road.

Q. Now east of Chicago?

A. Well, just east of Chicago, take—now I don't think there is a large amount from points east of Chicago, but there is some movement of—take for instance Detroit, we have a large movement of drugs, which takes second class from Detroit. We have a large amount of freight from Buffalo, which takes second class to the seaboard. Now under this order—

Mr. McHUGH:

Q. You say to the seaboard. You mean to the Missouri River cities?

A. To the Missouri River cities, yes, sir.

Mr. WALTER:

Q. Now isn't it true that the rate from the seaboard to Detroit, plus the rate from Detroit to the Mississippi river crossings, is greater, much greater than the through rate from the seaboard territory through Detroit to the Mississippi crossings?

452 A. No, I don't think so; I think it is on about an equalization.

Q. What is the rate up to Detroit?

A. I don't know.

Q. Then you don't know whether it is or not, isn't that true?

A. No, I don't know absolutely, but I say what I think.

Q. Yes, you are guessing.

A. Now all those rates are fixed from the seaboard to all points up to Buffalo and Pittsburg, they are all fixed on a percentage basis in and out. After you get west of Buffalo and at Buffalo they are fixed on an arbitrary, but the relationship is practically continued all the way through. Now you would have this anomalous position—I don't know that that cuts any figure in this case—but under the order you have got a lower rate from Rochester to the Missouri River than you have from Buffalo to the Missouri river.

Q. Rochester being in seaboard territory?

A. Yes, sir.

Q. Now then, isn't it the generally accepted rule as to all these points in the Central Freight Association territory that the rate into

those cities, plus the rate out to the Mississippi river, is greater by a considerable amount than the through rate from those points?

A. I don't think so. They are not exactly the same, but they are practically on a parity. There is an equalization. They are all on a percentage basis. The rate in and out to the Mississippi river might be somewhat higher.

453 Q. Now Mr. Eyman, can you give me a single point in Central Freight Association territory to which you know the rate from seaboard territory and the rate out from that place to the Mississippi river?

A. I can't do it now.

Q. Then your testimony is entirely guess work, isn't it?

A. I say that is my impression, I did not say that it was an absolute fact. I said that was my impression.

Q. You know nothing about what the facts are?

A. I don't know the rates, no, sir, I don't know the actual rates.

Q. Now the through rate from seaboard territory to the Missouri river cities is how much?

A. On what class?

Q. On first class?

A. \$1.48.

Q. The rate from Atlantic seaboard territory to St. Louis is how much?

A. Eighty-eight cents.

Q. And the rate from St. Louis?

A. Sixty cents.

Q. The rate to Chicago from seaboard territory is how much?

A. Seventy-five cents.

Q. And from Chicago to Missouri River cities?

A. On first class, eighty cents.

Q. Making a total of in and out rate of how much?

A. That would be \$1.55.

Q. With a difference of how much?

A. Seven cents on first class. Now let me qualify that.

454 Q. And formerly was eight cents, wasn't it?

A. Now let me qualify that. That is true of first class, it is true there is a difference on second class, but on third class and fourth class and fifth class there is a practical equalization, with a difference in favor of Chicago of one cent on the fourth class, so that the rates due—the effect of the rates, the effect of the business that is handled between the seaboard and the Missouri river, I should say, fourth and fifth classes break on Chicago and not on St. Louis.

Q. Now let me ask you then what the reduction is under the Commission's order of the fourth and fifth class?

A. I understand it is three cents.

Q. Then the great bulk of this traffic of which you complain so far as affected by the order is only three cents on a hundred pounds?

A. Well, three cents is a good deal of money on——

Q. That is all, is it?

A. That is all on those classes, yes, sir.

Q. You say those constitute the great bulk of the traffic?

A. So far as our line is concerned. I don't know what other lines handle. I don't know what is handled to the Southwestern Missouri river points.

Q. But that is what you do know of your own line?

A. Yes, sir.

455 Q. Now you have in this city a great organized force for securing local business, haven't you, for shipment west?

A. Well, now—no.

Q. Don't you spend anything for that?

A. Let me tell you, every man connected with the Chicago & North-Western Road is supposed to constitute a freight solicitor out after business, no matter what his other duties may be. Now we do have for the convenience of the public, for the purpose of giving information and all that sort of thing, we do have established city offices, one at Chicago, we have one at Milwaukee, we have one at Omaha, we have them all over the country, and then their business—there is no particular man who is assigned to the duty of soliciting business for the Missouri river—

Q. Now let me ask you this: On business originating at Chicago there is great competition among the carriers, isn't there?

A. Yes, sir.

Q. And you do have here a force of men who specially devote their services to securing that business?

A. Not that business, but all business.

Q. Well, originating at Chicago?

A. Yes, sir.

Q. Now then, how much do you expend each year, your company, in that service?

A. Well, I don't know exactly the amount of money that
456 we spend for that particular purpose. We have four or five freight solicitors on the street. We have a general agent, who acts as our ambassador between the public and the railroads, whose duty it is to aid in that way.

Q. Well, how does that foot up, all of it, now, that you can charge to soliciting freight in this city?

A. I should say at Chicago probably twelve or fifteen thousand dollars a year.

Q. Now do you include in that rental charge of offices and so forth?

A. No, no, because the offices are kept there for ticket purposes. We have our ticket and passenger agents.

Q. You have freight offices in the same place, haven't you?

A. They are in the ticket offices. The freight men are in the ticket offices, yes, sir.

Q. Now what proportion of the total charge would you assess to freight?

A. Well, I don't know about that.

Q. Well, it would amount to a few thousand dollars a year, wouldn't it?

A. I presume it would, yes, sir.

Q. Now then, don't you also on freight which originates at Chi-

cago and which you carry to the west pay switching charges or lighterage charges or other costs?

A. If the business originates on our own tracks we pay no switching charges.

457 Q. If it does not?

A. If it originates on the tracks of other lines, where there is a switching charge, we pay that switching charge. We pay no lighterage charge, we don't do any business with the lighterage company.

Q. But you do with switching companies?

A. Yes, sir. Now, on the through business, Mr. Walter, in addition—

Q. I have not asked you about the through business at all.

A. Oh, excuse me.

Q. Just about the local business. So far as you know, you don't have any rates in effect which are less than what the cost of transportation is?

A. We don't intend to have any rates in that are less than the cost of transportation. Now whether we have or have not I don't know.

Q. So far as your company is concerned, the rates which you have in effect are made to cover the cost of transportation?

A. No, we intend to have them so.

Q. Well, so far as you know, none of them transcend that limitation?

A. So far as we know they don't—any of our rates—pay us less than the cost of handling the business.

Q. Now do you include in that any depreciation, fixed charges or anything?

A. No, sir.

An adjournment was here taken until 2:00 P. M.

458 Two o'clock, P. M.

The WITNESS: Mr. Walter asked me as to whether we handled any business of these five classes which are affected by the order through any gateway excepting Chicago. My answer was yes, we did through Peoria. I want to add to that and say that we also handle large quantities of that business through the Milwaukee gateway and through the Manitowoc gateway. In fact we handle through the Milwaukee gateway on fourth and fifth classes a much greater amount of tonnage than we handle through the Chicago gateway. I wanted to make that addition to my answer as to the gateways.

Mr. McHUGH: Originating where?

A. Seaboard territory.

Mr. WALTER: Carried over what line to Manitowoc and Milwaukee?

A. Carried over lake and rail in some instances carried over the Grand Trunk and Pere Marquette and Grand Rapids & Indiana and those lines that work car ferries across the lake, the lake and rail shipments via steamboat from Buffalo to Milwaukee around the lakes handling seaboard business.

Q. Is that carried on the same rate up to the Mississippi River as though it went through Chicago?

459 A. Yes, sir. That is it is carried on the same rate via the Milwaukee gateway from the seaboard territory as would apply in case it was routed via Chicago. That rate is not the same on lake and rail business as all-rail business via Chicago but the rate on all-rail business via Milwaukee gateway is the same as all-rail business by the Chicago gateway and the earnings to the roads west of Chicago is the same whether it is all rail or whether it is lake and rail via Milwaukee or Chicago gateway. Our earnings are the same in either case. The eastern lines of course earn less lake and rail business than on the all rail business.

Q. Is that a through rate?

A. The rate is made exactly the same as it is carried by the Chicago gateway. It is carried on proportional rates and handled through the Milwaukee gateway in the same way it is handled through the Chicago gateway. There is no difference in the application of the rate.

Q. Is there a greater amount handled through Milwaukee than through Chicago?

A. There is a greater amount of fourth and fifth class rate. That is because that freight comes largely by lake and rail, that is sugars and coffees and articles of that kind and the steamship lines lake boats and rail lines as we call them, prefer to deliver that
460 business to us at Milwaukee rather than to bring it into Chicago.

Q. What is the rate from Milwaukee to Mississippi River crossings?

The WITNESS: The local rate?

Mr. WALTER: Yes, sir.

A. I think it is about 40 cents.

Q. Isn't it 49 cents?

A. It may be.

Q. About 6 cents higher than the Chicago rate, isn't it?

A. I don't remember exactly what it is but it is a little higher. My impression is that the rate from Milwaukee is a little higher than the rate from Chicago to the Mississippi River locally. That does not affect our proportion of this through.

Q. Isn't it 49.3 on first class?

A. I am not prepared to say positively as to that.

Q. The rate is something like six cents over the Chicago route.

The WITNESS: The local rate?

Mr. WALTER: Yes sir.

A. I expect that is true. If that is all on that point there was one other point that may answer was absolutely correct provided I understood your question right. You asked me as I understand it what the rate was from New York to the Missouri River. If you said the seaboard then my answer was not correct, but if you said New
461 York my answer — correct. Let me explain that. The all-rail rate from New York to the Mississippi River is 88 cents, that is proportional rate and 60 cents beyond, but the lake and rail rate from New York to Chicago is 52 cents and to St. Louis it is the same relative proportion over Chicago, but from Boston and Boston rate territory and all New England points basing on Boston, the

first class rate lake and rail to Chicago is 52 cents, and the first class rate to St. Louis is 83 cents. Therefore the break of first class rates on lake and rail is on Chicago there being one cent lower rate to Chicago on first class freight from Boston and Boston rate territory and New England territory destined to the Missouri River via Chicago than via St. Louis. When you asked the question I had in mind all the time the all-rail rate. Of course a large amount of tonnage is handled on the lake and rail rate and on the lake and rail rate so far as New England territory is concerned the rates make on Chicago and do not make on St. Louis.

Q. Can you tell us what per centage of the Atlantic seaboard business first five classes come by rail and lake to Chicago?

A. During the summer season I cannot tell you the exact percentage, but I would estimate that more than 50 per cent.

Q. Comes by lake and rail?

A. Yes, sir, those figures can be obtained absolutely.

462 Q. They are in the possession of the railroad aren't they?

A. They are in the possession of the eastern railroads, not the western.

Q. Do you have here on your desk every day or week a statement showing the tonnage handled by each carrier of the various kinds of traffic, and especially of the first five classes originating at the Atlantic seaboard bound west?

A. No, sir. We do not even have that on our own line.

Q. Does not the trunk line committee furnish that to you?

A. No, sir.

Cross-examination.

By Mr. ATWOOD:

Q. When the combination to the Missouri River on Chicago is less than on the Mississippi don't you compel the shipper to employ the Mississippi river rate?

A. No, sir.

Q. He has the advantage and is privileged to?

A. Yes, sir.

Q. To be the recipient of the advantage over that Missouri man?

A. He ships via the Chicago gateway, yes, sir.

Q. What was the territory that you spoke of or that you had in mind as being detrimentally affected by the installation of the proposed rates between the rivers?

A. All of the Mississippi valley Chicago, St. Louis and all
463 the territory where the rate is based on Chicago and on St. Louis.

Q. Does that mean, to be a little bit more geographically specific, the territory lying west of what is known as the seaboard territory and east of the Mississippi River and north of the Ohio River?

A. Generally that would be the territory, but my answer to your question had more especial reference to the territory lying along the Mississippi River and between the Mississippi River and Chicago and the territory where the rate based on Chicago and the St. Louis territory, but the other territory would be affected also as compared

to the present adjustment which has been the adjustment for more than twenty-five years.

Q. From that I understand you as saying, and you will correct me if I misunderstand you, that this territory other than that which is immediately adjacent to the Mississippi River is not considerably affected so as to be a serious factor in this problem?

A. I think it would be just as seriously affected because the change in the relationship of the rates is just as great for them as for those people.

Q. What points have you in mind in that territory not immediately adjacent to the Mississippi river which are to be detrimentally affected, as you say, engage in any considerable degree in the drygoods business, we will say, in a way that causes them to ship in from New York and out towards the west in the same way that Chicago and St. Louis does?

A. I am not fully advised as to the movement of traffic from what we call the Central Freight Association territory. There is a large movement of dry goods from St. Louis, Chicago and Milwaukee and there is a large amount of second, third, fourth and fifth class rates that is not dry goods.

Q. You will observe that I stated dry goods and did not ask about anything else. Do you know of any points where the dry goods jobbing business is considerable in that territory except St. Louis, Chicago and Milwaukee that you have been considering as being detrimentally affected?

A. I imagine that Cincinnati is quite a large dry goods jobbing point. I am not advised to what extent.

Q. That is only a surmise. You are not speaking from definite information?

A. I have no definite information on that point.

Q. Dry goods, as the term is ordinarily accepted, is first class, is it not?

A. Dry goods, excepting cotton piece goods.

Q. They go third class I believe?

A. Yes, sir.

Q. While we are speaking of that third class, do you know of any point, unless it is Cincinnati, and that is a mere surmise on your part, in this territory of which you have been speaking that has this jobbing in and out business like Chicago and St. Louis where white piece goods traveling third class would be involved?

A. I think the same points, Indianapolis, Cincinnati, and Buffalo and Detroit would all have more or less that line of trade.

Q. Is this a supposition or are you speaking from any knowledge?

A. I have no great knowledge on that point.

Q. Have you knowledge that enables you to state that you know they do a considerable business?

A. I would say that I know that the Missouri River jobbers do a considerable business, but I have no definite figures on that point.

Q. There are only one or two things more that I am a bit puzzled about and I know you will be glad to clear them up. When you

spoke of the cost of hauling, will you be good enough to state whether you meant to include the repairs that were necessary to make good the wear and tear on the property employed in the hauling as part of the cost? Answer yes or no.

A. I cannot answer that yes or no. If you will let me answer in my own way I think you will be satisfied. When we make the rates we take into consideration all the factors that might affect the cost of handling that business, wear and tear and the supervision and administration and everything else, but when a rate is forced upon us by the competition of some other gateway or some other condition we accept the conditions as we find them and figure if we can get the bare cost of the haul on that business we have added that much tonnage and have not added any burden on shippers of other freight on other roads by doing so. Bear in mind we do not make those rates. Those rates are made for us. We simply meet a condition that is fixed for us. We either meet that or forego the business. That is the difference that we make between the two transactions.

Q. I think you will recognize that there is a difference between the action of fixing a rate and what goes to constitute cost and I ask you simply about that. When you made the statement that you felt justified in taking a certain business at the cost of the haul I wanted to know what you had in mind as constituting the elements of cost of that haul?

A. Under those conditions the actual cost of the haul.

Q. What does that mean?

A. That means the cost of transporting that business, just the bare cost of transporting the business from one point to another point.

Q. That includes the wages of the employes?

A. That includes wages of the employes engaged in that particular transaction.

467 Q. And the fuel of course?

A. Yes.

Q. Supplies like oil and so on?

A. Whatever might be used.

Q. Wear and tear of the rolling stock, is that considered?

A. We do not consider the depreciation of the plant in figuring on that basis.

Q. Or the wear and tear of the rails, or roadbed, ties, or other part of the stationary portion of the road?

A. No, sir.

Q. None of those things are considered?

A. No, sir.

Q. And consequently of course it follows as a corollary I suppose that the interest on the property employed in the labor for that time would not be considered as an element of the cost of haul?

A. I think not.

Q. Then if I understand you correctly, and again I ask you to correct me if I am wrong, the cost of hauling as you employ it in this last connection means simply the wages of the employes en-

gaged in that particular task, plus the fuel, oil and light supplies that may be consumed in the performance of that particular task?

A. In handling that particular business.

Q. In handling that particular bunch of goods?

A. Yes.

Q. And does not include wear and tear on rolling stock,
468 road bed or take into consideration the value of the use of the property employed therein?

A. No, we do not take into consideration the main factors that we do in making our own rates.

Q. Of course the property that is employed in the performance of any other task while it is being so employed, I take it that is an axiomatic proposition, do we agree on that?

A. It might be and might not. It might be employed partially in handling other business. It might be employed wholly in this business and it might not. There is another element that enters into that, the question of the car supply, we might want a large equipment of cars in the western territory and it would cost us just as much and be just as much wear and tear on our property in handling those empty cars from Chicago to the Missouri River as it would if they were partially loaded or fully loaded with trans-continental freight, and consequently the cost to the company would not be one whit more in handling that business in that way than if we did not handle it, and the revenue that accrued to the company on that business would be a benefit.

Q. Is it the custom of your road to handle partially loaded cars to any considerable extent?

A. That depends on what you call partially loaded cars.

Q. I mean a car that is only partially loaded.

469 A. Then I say yes.

Q. It is customary to fill trains in a considerable degree with partly loaded cars?

A. Let me answer that in my own way.

Q. Yes.

A. The load for a 60,000 pound capacity box car would be 60,000 pounds, wouldn't it?

Mr. ATWOOD: Yes.

The WITNESS: It stands to reason that no railroad company ever handled 60,000 pounds of dry goods in a box car. 12,000 pounds, 15,000 pounds would be a very fair load of that class of freight in a car, consequently, figuring on the capacity of the car, that would be a partially loaded car. 80,000 pounds, 100,000 pounds——

Q. Then do I understand that simply because the car is filled with that which does not weigh to the capacity of the car, the power of the car, that you call it a partially loaded car?

A. Figuring on the capacity of the car, yes, sir.

Q. Isn't there such a thing as cubical contents as a measure of capacity as well as weight?

A. There is in figures but there is not in making a tariff.

Q. You know of course when you start out to make a schedule that all commodities do not weigh the same?

A. Certainly, we rate them accordingly.

470 Q. You know that dry goods does not weigh like coal and salt?

A. We do not have any car loads—

Q. Can you answer yes or no?

A. Yes, sure. Let me say further now that we have no car load rating on dry goods and consequently the capacity of the car is not taken into consideration in making a rate on dry goods, and we do handle dry goods and freight of that kind regardless of the capacity of the car, and that would be considered a partial load for a car. Our average for instance for dry goods or for merchandise handled through our houses, our average load would be perhaps 12,000 pounds. The actual loading capacity of that car even of that class of goods would probably be twice that.

Q. Is that all you want to say in that connection?

A. Yes.

Q. Now, do I understand you as saying that you do not take into account the amount of dry goods that can be carried in one of your cars when you come to determine what the tariff shall be?

A. We do take that into consideration, yes, sir. I said so.

Q. Then I misunderstood you when you said you did not consider it?

A. I did not say that.

Q. I think you did, but we will let it go that the last statement is the one you meant. Then it is a fact that the capacity of the car and the quantity that can be carried of a certain commodity has to be considered when you fix the rate on that commodity?

471 A. The bulk is one of the factors that is taken into consideration in fixing a rate.

Q. And consequently you were not quite fair were you when you said that simply because a car that would carry 60,000 pounds when filled with dry goods did not weigh 60,000 pounds constituted a partially filled car?

A. I did not intend to be unfair. You put the question as to whether we ever handled cars that were partially filled. We do handle large numbers of cars of merchandise partially filled. Even when the capacity of the car would be figured on the bulk we handle large quantities of merchandise to the Missouri River on our line at very much less than the capacity of the car.

Q. Do you mean the weighing capacity or the cubical capacity?

A. The cubical contents of the car.

Q. What proportion of your trains are loaded with cars that do not have their short weight capacity filled or their cubical contents filled?

A. I should say one third.

Q. Do I understand then that you only take traffic of a kind where the rate is such as only to pay for the haul when you can transport it by putting it in cars that are partially filled with other merchandise?

472 A. No, I did not say that.

Q. Do you move a considerable quantity of merchandise of any sort of kind at a haul cost rate where the cars are entirely filled with a certain commodity?

A. I cannot give you the percentage of the business which we move on that basis. We do not want to handle a considerable quantity of the business on that basis, and when we do, as I say it is a condition that is forced on us and we cannot help ourselves.

Q. Have you any instance of that kind in mind now?

A. No.

Q. The proportion, part, division, call it what you will that you get out of a through rate from Milwaukee to the Mississippi River are your earnings the same as from Chicago to the Missouri River?

A. Yes, sir.

Q. And the proportion or division between Milwaukee and the Mississippi River, is it the same as between Chicago and the Mississippi River?

A. Yes, the rate is made the same way.

Q. 14.7?

A. I do not know.

Q. Is there any difference made with these shipments whether it is lake and rail or all-rail?

A. Not so far as our earnings are concerned.

473 The complainants offer in evidence Western Traffic Line Tariff No. 786 I. C. C. 678, and ask to have the same marked "Exhibit B". The paper was so marked and here follows:

474 WILLIAM S. KALLMAN, a witness produced on behalf of the complainants, was duly sworn deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. State your full name?

A. William S. Kallman.

Q. Where do you reside?

A. Jersey City, New Jersey.

Q. What is your occupation?

A. Second Assistant Freight Traffic Manager New York Central Lines, east of Buffalo.

Q. What railroad experience have you had?

A. Twenty-seven years.

Q. All in that territory?

A. Yes.

Q. You may state whether you are familiar with the rates and the system of rate making which obtains in what is called Atlantic seaboard territory from that territory?

A. Yes.

Q. Handing you Complainant's Exhibit B, Trunk line tariff No. 786, calling your attention to pages 3 and 4 of that tariff, I will ask you to state whether you are familiar with the rates established for the point named on pages 3 and 4 to the west?

A. Yes, sir, I am.

Q. I will ask you to state whether there is a fixed relation in the rates from the various points named on those pages of that tariff?

A. There is.

(Here follow tariff sheets, marked pages 475-485.)

JOINT THROUGH FREIGHT TARIFF W. T. L. No. 786

(Cancels Joint Through Freight Tariff W. T. L. No. 623)

Abbotsford & North-Eastern Railroad,
Chicago & Alton Railroad,
G. F. D. No. 10289.

Chicago & North-Western Railway,
G. F. D. No. 7100.

Chicago, Burlington & Quincy Railway Co.,
G. F. O. No. 3014.

Chicago Great Western Railway,
Series O No. 2008.

Chicago, Milwaukee & St. Paul Railway,
G. F. D. No. 5120, I. O. O. No. A-5871.

Chicago, Rock Island & Pacific Railway,
G. F. D. No. 10273.

Chicago, St. Paul, Minneapolis & Omaha Railway,
G. F. D. No. 17003.

Copper Range Railroad,
G. F. D. No. 173.

Duluth, South Shore & Atlantic Railway,
G. F. D. No. 6211.

Fairchild & North-Eastern Railway,
G. F. O. No. 10002.

Green Bay & Western Railroad,
G. F. D. No. 5405.

—OF THE—

Illinois Central Railroad,
Tariff No. F-4008.

Indiana, Illinois & Iowa Railroad,
G. F. A. No. 21103.

Iowa Central Railway,
G. F. O. No. 3024.

Kewanee, Green Bay & Western Railroad,
Lake Superior & Ishpeming Railway,

Marquette, Tomahawk & Western Railway,
Marquette & South Eastern Railway,

G. F. D. No. 176.

Minneapolis & St. Louis Railroad,
G. F. O. No. 3004.

Minneapolis, St. Paul & Sault Ste. Marie Railway,
Muncieing Railway,

G. F. D. No. 425.

Northern Pacific Railway,
No. 10008.

Stanley, Merrill & Phillips Railway,
G. F. D. No. 88.

Wisconsin Central Railway,
Tariff No. B-505.

For additional tariffs canceled by the foregoing see Page 2.

—IN CONNECTION WITH—

RAILROADS NAMED ON PAGE 2

NAMING THROUGH RATES

—ON—

CLASSES AND COMMODITIES

—FROM—

ATLANTIC SEABOARD AND POINTS WEST THEREOF, EAST OF THE WESTERN TERMINI OF TRUNK LINES.

—TO—

St. Paul, Minneapolis, Minnesota Transfer, Winona, Duluth, Minn., La Crosse, Superior and Ashland, Wis.,

and stations taking same rates as maxima as named on pages Nos. 6 to 11 inclusive.

Also basis for making rates to Albert Lea, Austin, Faribault, Mankato, Owatonna, Red Wing,
Rochester and Waseca, Minn.

Via Chicago, Chicago Junctions, Kankakee, Peoria, Ill., Milwaukee, Manitowish, Wisc., Mackinaw City or Manistique, Mich.

GOVERNED BY OFFICIAL CLASSIFICATION

and exceptions thereto, as shown in Joint Through Freight Tariff W. T. L. No. 689, I. C. G. No. 539, or subsequent issues. II

SPECIAL NOTICE.

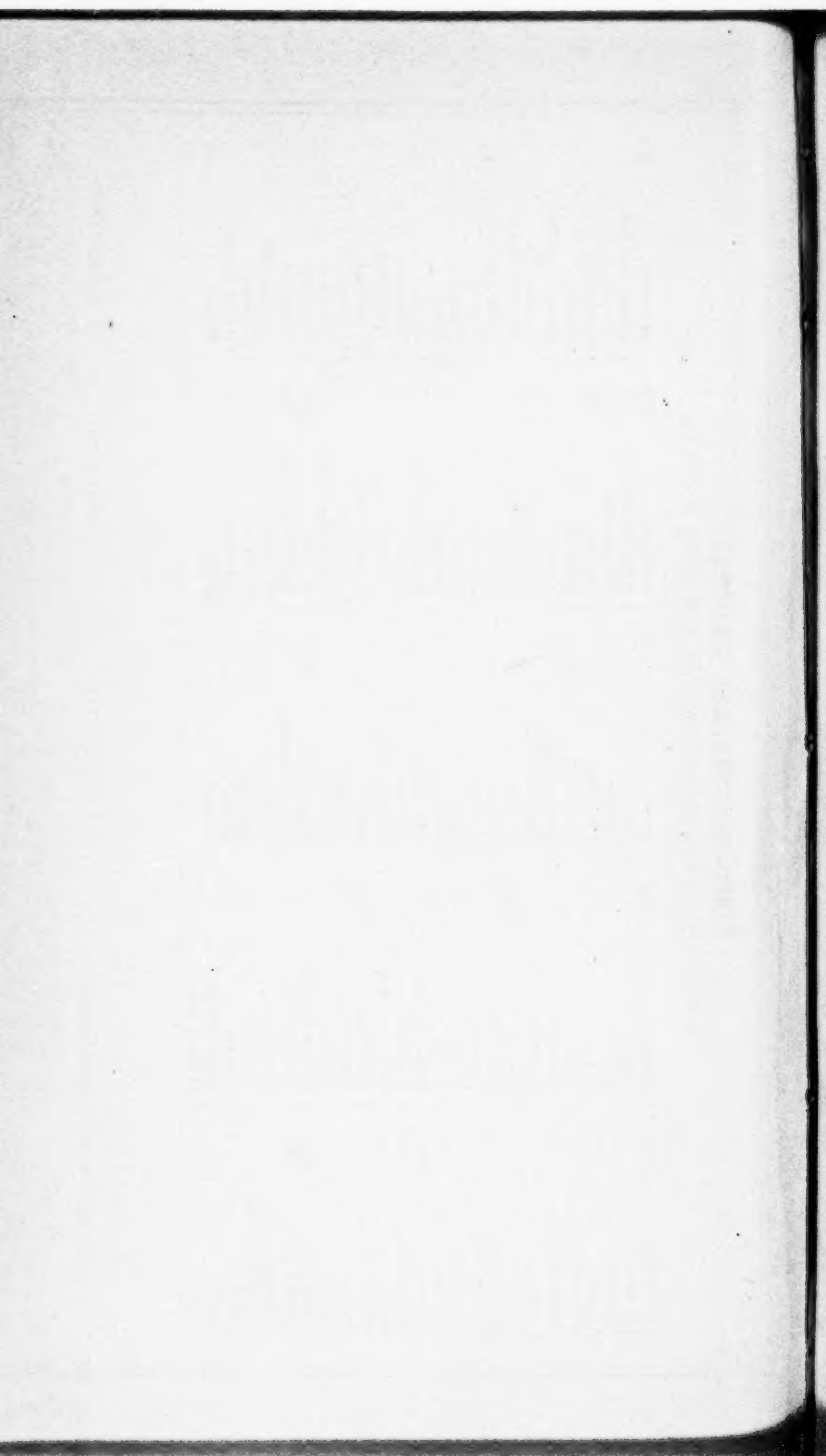
The publication of this Joint Tariff does not imply that the rates shown will prevail between all the points specified via all the lines parties to said Tariff. The rates, with the exceptions noted, are simply guaranteed via the respective routes on business to or from points named herein, which originates at, is destined to, or passes through points provided for herein, which points are on the respective systems of the lines parties to the Tariff.

TAKING EFFECT MARCH 5, 1906.

WM. L. ERBACH, Superintendent, A. & N. E. R., Athens, Wis.
C. A. KING, General Freight Agent, O. & A. R., Chicago.
E. D. BRIGHAM, General Freight Agent, O. N. W. R., Chicago.
W. E. HAMBLIN, General Freight Agent, Q. R. R., Chicago.
W. E. PINCKNEY, General Freight Agent, O. G. W. R., St. Paul, Minn.
E. A. KEENEY, General Freight Agent, C. M. & St. P. R., Chicago.
T. H. SIMMONS, General Freight Agent, C. R. I. & P. R., Chicago.
H. M. PEARSON, General Freight Agent, C. St. P. & O. R., St. Paul, Minn.
F. E. BOLLEN, General Freight Agent, C. St. P. & O. R., St. Paul, Minn.
W. A. WALKER, General Freight Agent, D. & M. R., Milwaukee, Wis.
W. B. BROUGHTON, Freight Traffic Manager, N. P. R., St. Paul, Minn.
W. O. MODARETT, General Freight Agent, G. B. & W. and Green Bay, Wis.
K. G. B. & W. R. R.,

W. E. KEEPPERS, General Freight Agent, Ill. Cent. R. R. Chicago.
T. J. COOK, General Freight Agent, I. & L. R., Chicago.
J. N. TITTEMORE, Freight Traffic Manager, Iowa Cent. R., Chicago.
H. A. ST. JOHN, General Freight Agent, L. & I. R., Marquette, Mich.
M. & S. E. R. V. and Muncieing R. Y., Marquette, Mich.
CHAR. H. GRUNDY, Superintendent M. T. & W. R. Y., Tomahawk, Wis.
J. N. TITTEMORE, Freight Traffic Manager, M. & St. L. R. R., Minneapolis, Minn.
GEO. O. OONN, Gen. Freight Agent, M. St. P. & S. S. E. R. Y., Minneapolis, Minn.
J. B. BAIRD, General Freight Agent, N. P. R., St. Paul, Minn.
K. O. MOREHOUSE, General Manager, S. M. & P. R. Y., Shallow, Wis.
BURTON JOHNSON, Gen. Frt. Agent, W. O. R. Y., Milwaukee, Wis.

CHICAGO, February 28, 1906.



486 Q. How is that relation evidenced?

A. The relation would not be evidenced in any fixed ratio by the tariffs. The tariff merely names the rates from the various groups of eastern points of origin to common western destinations. The relation, however, is a fixed one generally on a percentage of the New York Chicago rate.

Q. How long has that relationship that is fixed between those points as to rates to the west been maintained?

A. The relationship as now existing with reference to the New York Chicago rates has been in effect without any material change since 1887 when the Interstate Commerce law took effect. It was in effect prior thereto, a different fabric of rates, but the general relationship was in effect prior to 1887 for some ten to fifteen years.

Q. To get it into the record outside of the mere exhibit, state the geographical extent of the territory included in these pages of that tariff?

A. Broadly it would be all territory east of a line drawn from Suspension Bridge, New York through Buffalo, Salamanca, New York, Pittsburg, Pennsylvania, and Parkersburg, West Virginia north of the Potomac River to the Atlantic seaboard.

Q. In the system of percentages used to note the relationship that is fixed what is the basis?

A. The basing rates are the rates from New York City to Chicago, Illinois:

487 Q. Taking New York as a hundred per cent?

A. New York as a cipher and Chicago as a hundred per cent. The mere expression of these rates as so-called percentage points is a matter of convenience. The territory west of and including Pittsburg and Erie, Pennsylvania, as far as and including the Mississippi River on the west, the Canadian boundary on the north, the Ohio River on the south, that territory includes western Pennsylvania, the states of Ohio, Illinois and also the Peninsula of Michigan and part of the Province of Ontario, a small part of the state of Wisconsin, a small part of the state of Kentucky is known as percentage territory. Chicago rates from New York are so-called 100 per cent rate-. They are the basing rates. Rates from New York to other points in the territory described are higher or lower than the Chicago rates expressed in percentages as for example 110 per cent or 71 per cent in the proportion of the short line distance from New York to those points as compared with the short line distance from New York to Chicago, with the exception that Erie and other competitive or commercial conditions have brought about a departure from the short line mileage scale. The percentages of the New York Chicago rate range from 60 per cent as from New York to Pittsburg or Erie to as high as 125 per cent, the latter covering points on the east bank of the Mississippi River.

488 Q. You may state whether the business houses in the territory named covered by pages 3 and 4 of that tariff, have been established and the business carried on and adjusted to the relation of rates fixed as you have testified?

A. Oh, yes, I perhaps should have supplemented my previous an-

swer by stating—I explained the percentage scale of rates insofar as points of destination were concerned. Insofar as the points of origin are concerned there is a somewhat similar adjustment of rates, the rates from New York being standard, so-called, New York to Chicago and relatively to other points, the rates from Buffalo and Baltimore are fixed differences below the New York rate, not percentages but fixed differences determined by arbitration. They are of some thirty years' standing. They have been twice considered by the Interstate Commerce Commission and substantially approved. Philadelphia and Baltimore take so-called port differentials under New York. The rates from Philadelphia are for the six classes of the official classification, the following amount less than the New York rates, 6 cents first class, 6 cents second class, 2 cents third class, 2 cents fourth class, 2 cents fifth class, 2 cents sixth class. The rates from Baltimore are less than the rates from New York in the following

amount: 8 cents first class, 8 cents second class, 3 cents third
 489 third class, 3 cents fourth class, 3 cents fifth class, 3 cents sixth class. By long use there is a considerable interior territory west of Philadelphia and Baltimore which is subject to the Philadelphia or Baltimore rates as the case may be. From practically all points in New England, which includes Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and a large part of the state of Maine the rate to points west of Pittsburg and Erie are the same as from New York. From New York state points the rates are over the eastern section of the state fixed at approximately 80 per cent of the Chicago rates. That would include such principal points as Albany and Utica. From the central and western part of the state of New York between such principal cities as Syracuse and Rochester the rates are 70 per cent of the Chicago rates. From a limited section of the territory lying along the Niagara River in the so-called Buffalo zone the rates are the same as from Buffalo. From the territory east of Pittsburg in the state of Pennsylvania the rates are slightly higher than the Pittsburg rates but lower than the Baltimore rates. In general that is a statement of the adjustment of rates in the territory east of Buffalo and Pittsburg to points west of Buffalo and Pittsburg on and east of the Mississippi River that have prevailed for from twenty to thirty years.

490 Cross-examination.

By Mr. WALTER:

Q. Do you understand that the order of the Commission reduces rates of the first five classes from all the points named on pages 3 and 4 uniformly?

A. I do not know what the order of the Commission is in this case. I have not read it recently.

Q. You do not know anything about what the order is do you?

A. I know something about it but I have not read it recently. I have not read it within a sufficiently recent period to enable me to answer your question.

Q. If the Commission's order should reduce the rate uniformly, that is the same from every point embraced on pages 3 and 4 when

the first five classes originates in these points and is destined to Missouri River points would you say that the relation of rates that you have described was disturbed in anywise?

The WITNESS: From all these points?

Mr. WALTER: Yes. If every point was reduced exactly the same named in pages 3 and 4, would not the same relation exist as before the reduction was made?

A. I perhaps do not quite grasp your question. Let me state my understanding of it. I understand your question to be that assuming the Interstate Commerce Commission had issued an order
491 requiring carriers from the Mississippi to the Missouri River to reduce their rate from certain figures to certain other figures as applicable upon all traffic originating east of a line from Buffalo through Pittsburg and Parkersburg, Virginia, whether in my opinion that order and that reduction of rates would affect the adjustment of rates I have described.

Mr. WALTER: Yes, sir, the relation?

A. It does not appear to me it would as to a matter of adjustment of rates. It might, however, be the result.

Q. In what way?

A. In bringing about new competitive conditions as between the shippers and manufacturers in the territory east of Buffalo and Pittsburg and manufacturing shippers west of Buffalo and Pittsburg.

Q. But so far as the territory you have described is concerned if the reduction is the same from every one of these places then there would be no changes of the relation between these points would there?

A. Not as to the points within the territory I have described, and as a matter of competition between the manufacturers and shippers in that territory but it might result, and it probably would, that that adjustment of rates would have to be altered.

Q. Why?

A. As a matter of competition between the producers in the eastern territory and territory west.

492 Q. Let me ask you, if the carriers do make reductions whenever they find that the competition existing between shippers at widely separated points causes such shippers to make requests for reduction in rates?

A. They do when they are satisfied that there is a necessity for it.

Q. But it all depends on the circumstances and conditions surrounding the traffic?

A. In each case.

Q. And that is determined upon its own separate bottom?

A. Yes, sir.

Q. Now the rate from Buffalo on first class goods to Mississippi River common points is how much?

A. I do not recall what it is.

Q. 55½ cents?

A. That sounds like it.

Q. What is the rate to Buffalo from points named in pages 4 and 5?

A. From New York, 39 cents.

Q. And the sum of the rate in to Buffalo plus the rate out of Buffalo into the Mississippi River plus the rate out of the Mississippi River into the Missouri River is much greater than the sum of the rates New York to Mississippi River plus the rate beyond?

A. It maybe, but that is not the governing factor at all.

Q. That is true, however?

A. It may be.

Q. Isn't it the rule that the rates from points between seaboard territory named on pages 3 and 4 and points up to Chicago the rate from such points into the Mississippi River is greater than the through rate from New York through these points to the Mississippi River?

A. Broadly speaking, yes.

Q. Isn't that generally true of all rate making?

A. Generally.

Q. That the through rate is lower per ton per mile than the local rate?

A. Not necessarily per ton per mile, but lower in fact. Yes, that is a general proposition.

HENRY CLAY MARTIN, a witness produced on behalf of the complainants, was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH.

Q. State your full name?

A. Henry Clay Martin.

Q. Where do you reside?

A. In Chicago.

Q. What is your occupation?

A. Chief of Tariff Bureau of the Grand Trunk Railway.

Q. I will ask you to state what railroad experience you have had?

A. Do you mean length of time?

Q. Yes, how many years?

A. About eighteen years.

Q. And how long have you been in Chicago?

494 A. That length of time.

Q. Are you familiar with the system of rate making that has been established and is now applied in what is known as Central Freight Association tariff territory?

A. Fairly so I believe.

Q. What is that territory?

A. In a general way it is the territory west of Buffalo, Pittsburg and north of the Ohio River and east of the Mississippi River and east of the Lakes.

Q. You may state whether the rates to the west from points in that territory have been established with relation each to the other?

A. Yes, sir, that is the basis generally.

Q. Is the relation of those rates evidenced by a percentage?

A. In the C. F. A. territory.

Q. Yes.

A. Not altogether.

Q. How is that through relationship established?

A. In most instances on the basis of competitive commercial conditions and with relation to the service performed.

Q. In determining those rates for that territory west you may state whether they start with the rates that obtain at the west end of the Atlantic seaboard territory?

A. The dividing line between the seaboard territory and the C. F. A. territory?

Q. Yes, sir?

A. Scales of rates with the C. F. A. territory start where the trunk line scale which is based on a percentage leaves off, and we work west from that on the basis generally speaking that I announced.

Q. So that the rates for the transportation west from the various points in the C. F. A. territory are fixed with relation to each other and with relation to the rate from the trunk territory?

A. That is true to a very great extent.

Q. And the business houses that have been established in the C. F. A. territory have grown and developed upon that adjustment of rates, not only the relation between the cities in that territory but also with reference to the rates maintained from the Atlantic seaboard territory?

A. Necessarily so to a large extent, a greater extent than otherwise.

Cross-examination.

By Mr. WALTER:

Q. You have lived in Chicago all this time that you have had railroad experience, this eighteen years?

A. Yes, sir.

Q. You do not know what the commercial conditions are in the Central Freight Association Territory?

A. I may not know them fully, but I know them pretty generally insofar as they relate to the question of rates on freight traffic.

Q. Which is in a general way all that you know?

A. Yes, sir.

Q. You do not know specifically the conditions occurring at Cincinnati as to any of the first five classes?

A. Not in all its details, no sir.

Q. And in order to make a comparison which is really worth something, you would want to know those details, would you not?

A. I would not put it in that way. While I might not know the detailed knowledge the general knowledge is pretty well disseminated in our conferences and in the conditions that manifest themselves in the whole territory. The relations existing between one part of a territory and another make us somewhat conversant with those conditions. I might not be specific in some particular instance, but in a general way, yes.

Q. Isn't it true that all that you know about the matter is that the business that has been built up has been built up under whatever rates were in effect?

A. In a general way, yes.

Q. And those rates have fluctuated from time to time haven't they?

A. Immaterially.

Q. What do you mean by immaterially?

A. There may have been some changes in some of the classes and some of the classes that I know of today have not changed in
497 the last fifteen years or eighteen years.

Q. Have transportation conditions changed any in that time?

A. I would assume that they had, although I am not an operating man.

Q. And railroads carry a much larger amount of traffic?

A. That may be true.

Q. And the cars carry much more tonnage than they did then?

A. Yes.

Q. The engines pull much heavier loads than they did then?

A. Yes, I guess that is true.

Q. All of that tends to cheapen the cost upon each ton carried doesn't it?

A. I believe that is the way they figure it generally.

Redirect examination.

By Mr. McHUGH:

Q. Your position is such that you are in touch with all agitation with respect to the rates in that territory?

A. That is true practically, yes.

Q. Where there has been a fluctuation of rates it is a fluctuation that is relative?

A. That is true.

Recross-examination.

By Mr. WALTER:

Q. Has there been much complaint in that territory?
498 & 499 A. I have not heard of but very little. I do not know of anything of any particular importance relating particularly to the question at issue here as I understand it.

Q. And your knowledge of rate conditions and so on comes to you as a result of conferences and admissions by shippers, etc.?

A. Also being in the territory. I do not sit on my chair in the office all the time.

Q. Do you go down through the territory occasionally?

A. Quite a good deal.

Q. Just tell us how much you do go?

A. Probably twice or three times a month I am over in Michigan and down in Ohio and as far east as Buffalo.

Q. Do you have a regular circuit that you ride?

A. Not exactly that no. I go as occasion requires to cope with these conditions.

Adjourned to ten o'clock tomorrow morning.

500

JANUARY 29, 1909—10 o'clock a. m.

HENRY KIRK WHITE, JR., a witness produced on behalf of the complainants, was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. What is your name?

A. Henry Kirk White, Jr.

Q. Where do you reside?

A. Detroit, Michigan.

Q. What is your business?

A. I am a maker of cans, fiber cans.

Q. How extensive is your business, what territory do you cover with your trade?

A. I cover all the United States practically.

Q. Where is your factory located?

A. At Detroit, Michigan.

Q. Do you do business at the Missouri River points?

A. Yes, sir.

Q. Where are the factories located of your principal competitors in your trade?

A. Most of them in the east.

Q. In what part of the east?

A. New York, Brooklyn, Philadelphia.

Q. They are in what is called Atlantic seaboard territory, in railroad designation?

501

A. Yes, sir.

Q. You may state what the fact is as to whether the relative rates to the Missouri River cities obtaining from your place of business, Detroit, as compared with the rates from your principal competitors in the Atlantic seaboard territory is a factor in your business?

A. It certainly is.

Q. There is a certain difference in the rate from your place of business to Chicago and the rate from that of your competitors in the Atlantic seaboard territory to Chicago?

A. Yes, sir.

Q. That relation of rates has existed some time?

A. Yes, sir.

Q. On that relation of rates your business was established and has developed?

A. Yes, sir.

Q. You may state what the effect upon your business would be if the order of the Commission went into effect and the shippers in the Atlantic seaboard territory, your competitors, were to have their goods hauled between the Mississippi and the Missouri River at a lower rate than was charged you for that tariff.

The WITNESS: You mean in my particular business?

Mr. McHUGH: Yes, sir.

A. It would mean that in most cases it would be a positive loss of business to me.

502 Q. Just explain why that would be?

A. Because cans are made on a very close margin of profit, any kind of cans, and we have simply to rely on the volume of business. Very often two cents a thousand will make or lose a contract. That might mean two or three dollars a car even, and although it seems very small yet any little fluctuation there means lots of business if it goes against us.

Q. What class does your product take?

The WITNESS: In this territory?

Mr. McHUGH: In the western classification?

A. Third class. First class in less than car loads and third class in car loads.

Q. What you have said with reference to your particular line of business you may state whether that is in general true of business in Central Freight Association territory?

A. Practically the same thing.

Q. Take a full car load of your product moving between the Mississippi River and the Missouri River, what would be the amount of the reduction in favor of the Atlantic seaboard shipper of the gross charge for that haul?

The WITNESS: Per car load of goods?

Mr. McHUGH: Per car load.

A. Five dollars.

Q. If the order of the Commission went into effect?

A. Yes, sir.

503 Q. You say your business is done on such a close margin that that would give him a leverage that would control the business?

A. He would get the business and I would lose it.

Cross-examination.

By Mr. WALTER:

Q. You live at Detroit, Mr. White?

A. Yes, sir.

Q. Are you solely engaged in the manufacturing business?

A. Yes, sir.

Q. What kind of cans do you make?

A. We make a fiber can.

Q. What is a fiber can?

A. It is a can with a fiber body and may have metal ends and may have fiber ends.

Q. What do you make the fiber from?

A. Sulphite fiber, wood. We use three or four different kinds, jute and sulphite fiber.

Q. Where do you get your raw material?

A. Principally from the east.

Q. That is shipped in from what points?

A. Down near New York.

Q. You pay the rate on the raw material into Detroit?

A. Yes, sir.

Q. How much is that rate?

504 A. I cannot tell you off hand *hand* now.

Q. Give me as near as you can?

A. I cannot tell you because all I know about the purchase of the raw materials—

Q. Through what port is your stuff imported?

A. It is not imported. It is manufactured down in the eastern country.

Q. Name a place?

A. Up on the Hudson River there.

Q. Give me the institution?

A. The Fort Orange Paper Company I think it is, Poughkeepsie.

Q. Is that your largest source of raw material?

A. One of them.

Q. Name some others?

A. There are two or three up in the northern part of New York state.

Q. Name the places?

A. I cannot do it because I am not the purchasing agent there. I know in a general way which way they come.

Q. What is the rate on that raw material into Detroit?

A. I cannot tell you.

Q. About what?

A. I could not tell you.

Q. Is it 35 cents?

A. You would have to see my rate man for that.

Q. You have given testimony here as to what the effect of this is going to be?

A. Yes, sir.

Q. It is presumed that you have knowledge of the business as to what it costs you to do that business?

505 A. Yes, I have.

Q. What does it cost you to get that raw material in?

A. I cannot tell you in that specific case, but I can tell you that the selling prices are all based on the cost of material, landed in Detroit.

Q. You are testifying as to the advantage this rate would give your competitor?

A. Yes, sir.

Q. In order to determine how much you know about that we want to know what you pay on the raw material into Detroit.

A. I am sorry I cannot tell you. I know those things are given to me but I cannot remember them now. You know that all this fiber stuff has zones. East of Buffalo is one zone and west of Buffalo to a certain point is another one. It makes no difference where you are located if you are located in the west you simply have to pay a bigger price for your fiber. It is based on that.

Q. What is the rate from Detroit to the Mississippi River on materials going to the Missouri River cities?

A. I don't know that.

Q. You don't know what your rate is on your finished product?

A. No, I do not.

Q. You don't know what the rate is that your competitor pays from his seaboard territory to the Missouri River, do you?

A. No.

Q. You don't know whether the sum of your raw material 506 into Detroit, plus your finished product from Detroit to the Mississippi river is greater or less than your competitor pays on finished product?

A. I know that my raw materials cost me more than his do. I know they cost me just the difference between his freight and mine.

Q. Do you know what difference is?

A. No.

Q. How do you know there is a difference?

A. That is common property. Everybody knows that.

Q. What is that common property?

A. I cannot tell you the details. I wish I could. I would if I could but I cannot.

Q. You are at Detroit?

A. Yes, sir.

Q. How many miles is that from New York?

A. About seven hundred and something.

Q. In your finished product you have a start of 700 miles over your eastern competitor, haven't you?

A. Yes.

Q. What is the commission reduction on third class car loads? The WITNESS: Where from?

Mr. WALTER: Per hundred pounds when it goes between the rivers.

A. I think it is about five cents.

Q. Five cents a hundred pounds?

A. If I remember right my freight man tells me it is five cents.

507 Q. What is the first class reduction?

A. I think he said it was about 9 cents.

Q. What you are testifying to is what you were told by your freight traffic man?

A. Yes, and what I know in a general way about it.

Q. He knows infinitely more about this matter than you do?

A. About the details of it, but not about the effect on the business in general.

Q. You are basing your testimony as to what the effect will be on information which is given you by your freight traffic man?

A. Partially.

Q. He is not here?

A. Only partially based on that.

Q. What is it besides that that you base it on?

A. My traffic man don't know what the selling prices are. He don't know what the effect of competitive business would be if these selling prices were disturbed. The selling prices of course are based on a great many things, one of which is the rate.

Q. You don't know what your rate from Detroit to the river is do you?

A. No, sir.

Q. You don't know how much less it is than the seaboard competitor pays?

A. Not off-hand. I have been told that and we have made our prices but I cannot remember them.

Q. You don't know as a matter of fact, what the condition is?

A. Not actually.

Q. When you state that the reduction in rate gives him an advantage over you you don't know whether prior to that reduction if a reduction is made you have an advantage over him?

A. I don't think we do.

Q. Upon what do you base that?

A. For the simple reason that our raw material costs a great deal more than his does, the difference in the freight.

Q. That is due to the location of your business isn't it?

A. Yes.

Q. When you located at Detroit you knew that you had to get your raw material from the east?

A. Yes, sir.

Q. And bring it into Detroit?

A. Yes, sir.

Q. Make your finished product there?

A. Yes, sir.

Q. Do you sell any finished material in the east?

A. Some.

Q. You compete with these people right in their markets, don't you?

A. On very limited stuff, not very much. We cannot do it.

Q. You don't know the rate on the raw material into your plant?

A. No.

Q. How much of a plant have you got, how much is your investment?

A. About \$400,000.

Q. Is it a corporation?

A. Yes, sir.

Q. What profit have you made in the last year?

509 Objected to by Mr. McHugh as not proper cross-examination.

The WITNESS: Have I got to answer that? Well, I just as lieve. \$27,000.

Q. What dividends did you declare?

A. Six per cent.

Q. What is your capitalization?

A. \$400,000. We had a little surplus, enough to fix it up.

Q. How many thousand cans did you ship to the Missouri River points?

The WITNESS: Last year?

Mr. WALTER: Yes.

A. Thirty million cans.

Q. To the Missouri River?

A. Yes.

Q. What is the size of those cans?

A. 3 by $4\frac{7}{8}$, 3 inches in diameter by $4\frac{7}{8}$ high.

Q. Cylindrical in form?

A. Yes, sir.

Q. What are they worth by the thousand?

The WITNESS: You mean what do we sell them for?

Mr. WALTER: Yes, sir?

A. In the neighborhood of \$8. It is a little bit less than that.

Q. Eight dollars a thousand?

A. Yes.

Q. Did you sell them on a margin of only two cents on a thousand cans?

A. Two cents a thousand would have lost that order.

Q. Was it a single order?

A. Yes, but it has spread out to more than a single order
510 now.

Q. You say you sold thirty million cans at the Missouri River points?

A. Yes.

Q. Two cents less price on those cans would have lost you that business?

A. Yes.

Q. What is the profit on that thirty million cans?

A. You mean the net profit to me after the freight is paid and everything?

Q. No, the profit on the selling price?

A. That has got to be counted in.

Q. Did you pay the freight?

The WITNESS: Pay what freight?

Mr. WALTER: To the Missouri River points?

A. Yes, sir.

Q. You sold them delivered there?

A. Yes.

Q. What is the profit without the freight?

A. I cannot tell you that.

Q. Tell me what the profit is on a thousand cans, what did you sell them for?

A. We have to sell at very close margins.

Q. What was the actual selling price on the thousand cans?

A. In the neighborhood of eight dollars.

Q. Eight dollars a thousand?

A. Yes.

Q. What did that thousand cans cost you to produce?

A. Very near eight dollars.

511 Q. How near eight dollars?

A. I cannot tell you off-hand.

Q. Give us an estimate?

A. There are so many types of them. You may build them up in

different ways, put different tops on them. Some were labeled and some were not labeled.

Q. Do they all have the same rate?

A. Oh, yes.

Q. It costs the same to make one as another?

A. It costs the same for the freight?

Q. I am speaking about the cost of production?

A. If you put on a label that is extra.

Q. You know what the cost to you is of a thousand cans of the various descriptions in your warehouse ready to ship?

A. I cannot tell you that off-hand. If I had my data here I could.

Q. Take the average, what is it?

A. I don't know.

Q. You know what it costs you to do business?

A. Yes, of course I know in a general way but I cannot tell you in these specific instances. I wish I had my data here, I would give it to you willingly.

Q. Those sell for \$8 a thousand?

A. Yes.

Q. Do they cost you over five to make?

A. Yes, I should say they did.

Q. How much more?

A. It costs nearly eight dollars to make them.

512 Q. How near eight?

A. I cannot tell you.

Q. You cannot even approximate?

A. No, I know it is up close to eight dollars.

Q. How do you know then that a reduction of five cents on the hundred pounds of your cans would be ruinous to your business in the Mississippi valley?

A. I did not say that.

Q. Didn't you say that this reduction would cut you off from this business?

A. Five cents a hundred, yes, sir, if they had a difference of two cents a hundred. On big competitive business like that two cents a thousand means a whole lot in a year of thirty million cans.

Q. You said it would prevent you getting the business?

A. It would.

Q. How much do a thousand cans weigh?

A. Say in the neighborhood of a hundred pounds.

Q. On a thousand cans which are worth eight dollars, a reduction of five cents would destroy your market in that region?

A. Yes, sir, if the other fellow got the advantage over me of five cents I might just as well quit.

Q. Couldn't you easily reduce your selling price?

A. No, sir, you cannot. It is right down to the quick.

Q. Give me the names of your competitors?

513 A. There is Robert Gair, of Brooklyn, Empire Box Company of New York City, then there is Seeley of New York. There is another one in New York, I cannot think of his

name just now. There is another one at Philadelphia. I think it is called the Philadelphia Paper Tube & Box Company, or something like that.

Q. Are those your chief competitors?

A. Yes.

Q. And the only chief competitors you have?

A. There is another one down in Easton, Pennsylvania, just out of New York a little ways.

Q. Is that seaboard territory?

A. I guess so.

Q. Have you any in Central Freight Association territory?

A. Not to amount to anything.

Q. Have you any to the west of you?

A. Not that I know of.

Q. How far to the east have you sold orders?

A. We don't seem to be able to get in very strong there at all.

Q. Where have you sold?

A. We have attempted in New York and all along the line.

Q. You have sold in New York?

A. Just a little.

Q. How much?

A. To the best of my knowledge inside of three years that we have been trying there I don't suppose we have sold thirty thousand dollars' worth. We cannot get in.

Q. That would be some two or three million cans?

514 A. It might be. Might be a different style. The only thing for us to do to get in there is to go down there with a factory, build a factory there.

Q. In that way you would do away with the——

A. Do away with the freight on the raw material to Detroit.

Q. How much business do your competitors do in the Missouri River cities?

A. I don't know that.

Q. Do you know whether they have done any business at all there?

A. I know this, that whenever I attempt to get a contract they are all around me like bees and it is a case of arithmetic to get it, that is all.

Q. To whom did you sell those thirty million cans at the Missouri River?

The WITNESS: Is this testimony for the public?

Mr. WALTER: It goes into the public records, yes.

A. I do not care though for the competitors know it any way I guess. Mostly the Cudahy Packing Company.

Q. At what point?

A. Mostly at Omaha.

Q. Where else?

A. They have a plant in Kansas City too.

Q. Did you sell to anybody else out of that thirty million?

A. Yes, sir.

- Q. To whom else?
- A. There are several other concerns in the territory up and down the river. I cannot remember the names.
- 515 Q. What proportion of the total went to the Cudahy packing people?
- A. About two-thirds.
- Q. Was the rest in one order?
- A. No, scattered.
- Q. Upon all of this traffic you tell me you paid the freight?
- A. Yes.
- Q. Did you get any concession from anybody on your freight rate?
- A. Not a cent.
- Q. During the last ten years?
- A. No, sir.
- Q. Direct or indirect?
- A. No, sir.
- Q. What railroad carried it?
- A. Several of them.
- Q. Name the railroads?
- A. Most every railroad had a piece of it going to the Missouri River.
- Q. Out of Detroit what railroads carried that business?
- A. Michigan Central, Wabash, Pere Marquette, Grand Trunk and Lake Shore.
- Q. Did you route it over any particular road west of Chicago?
- A. No.
- Q. What was your freight bill last year on cans?
- A. I cannot tell you.
- Q. What was your total production in million cans?
- A. I don't know say fifty or sixty million. It might be seventy-five million. About fifty or sixty million I should say.
- Q. Who owns the stock in your concern?
- A. Mostly local people.
- 516 Q. Do the Cudahy people have any interest in it?
- A. Not a cent.
- Q. Your total production was fifty or sixty million?
- A. As near as I can remember.
- Q. Thirty million of it went to the Missouri River territory?
- A. Yes.
- Q. Twenty million of that to Cudahy?
- A. Yes, sir.
- Q. You say you made \$27,000 profit and you had production of 60,000,000 cans. Now that 60,000,000 cans would make a profit of \$450 on the million, and that would be 40 cents profit on the thousand would it not?
- A. I don't know
- Q. Figure it for yourself?
- A. I may be mistaken on the total number of cans, it might have been more.

Q. Figure it on the figures that you gave, 60,000,000 cans and your profit was \$27,000?

A. It is only sixty thousand the profit would show 45 cents, wouldn't it?

Mr. WALTER: Yes.

A. There must be more than that.

Q. Or else you must be mistaken about the margin of profit for doing business at the Missouri River cities.

A. No, I am not on that. I might have made more profit somewhere else nearer at hand, nearer Detroit.

Q. You said that a third of your business went to the
517 Missouri River cities?

A. Yes.

Q. Yet you cannot tell me what the profit was on that?

A. No, I cannot tell you without my data here of course.

Q. You don't know whether it is greater or less than your profit at other places?

A. I am inclined to think I am a little wrong on the gross number of cans. There might have been more than that.

Q. You think so because when you figure it you find that the profit is much greater than you have said heretofore?

A. I know enough about the thing in a general way to know that my profit is not 45 cents a thousand cans of the average kind.

Q. Yet that is the profit that you made on your whole business?

A. It would seem so. That represents about five per cent.

Q. When did you first learn of the loss that you say stares you in the face by reason of this order of the Commission?

A. It was brought to me the other day by my freight man.

Q. What did he say about it?

A. He proposed that we do some figuring on it and I took it up with the General Sales Agent, and it showed what I tell you.

Q. What else did he say?

A. That is about all. He made a proposition that we re-
518 figure and see if we could not make a reduction in the cost so as to meet this. It certainly shows a disadvantage.

Q. Then what did he say?

A. He didn't say anything more. I had to go to Mobile for the Western Classification meeting and had to come down here.

Q. When were you first spoken to about coming here to testify in this proceeding?

A. Not very long ago?

Q. When?

A. Something like last week I believe.

Q. Who spoke to you about it, what railroad man?

A. My own freight man told me. Somebody approached him, I don't know who it was.

Q. Did he go into figures to illustrate the effect, as he understood it?

A. As I say, he made a proposition that we should go into figures and we went into that just casually. All we went after was the difference between the rivers and 9 cents on the first and I think it

was seven on the second and five on the third and the first and third affected us.

Q. You and your freight man figured on this matter between the rivers?

A. Yes, a little.

Q. You prepared yourself to testify in regard to the matters?

A. More or less.

Q. Is it more or less?

A. (No answer.)

519 Q. In looking over the cost of your business, did you make any effort at all to see what the cost of this business was?

A. Yes, sir.

Q. The profit on the Missouri River trade?

A. Yes sir.

Q. What did you find out about it?

A. As I told you before the profit is very narrow indeed.

Q. How narrow, what do you mean by narrow?

A. I could not—

Q. You have some meaning to that?

A. I cannot give you the specific figures, but I know that this Missouri River is a pretty hard competition and we have to figure right down to the quick.

Q. What do you mean by very small? How do you know that when you make that statement?

A. It is a sort of a general impression I have retained after I have gone into the thing in detail.

Q. Isn't it simply your general impression from the fact that you want every advantage that you can keep?

A. I certainly do not want to lose any advantage and I certainly do not want the other fellow to get any over me. It is certainly a disadvantage to me to have somebody else have five cents or nine cents over me between the rivers.

Q. You do not know but what you have had an advantage over him all the time of a great deal more than that do you?

520 A. Yes, sir, I do know that it is just about six to one and half a dozen to the other, by the time you get the freight paid on your raw material from the east there is just about as much added on.

Q. Is not your third class rate to the Mississippi River crossings from Detroit only 30 cents?

A. I don't know that.

Q. If it is only 30 cents and if the competitor in the east pays a rate of 58 or 59 cents, haven't you an advantage there of 28 or 29 cents on the hundred pounds?

A. I don't think so.

Q. If your freight rate is only 30 cents and his is 58 or 59 to the Mississippi River crossings, don't you have an advantage of the difference in that freight rate?

A. No.

Q. If the first class rate from seaboard territory is 87 cents to the

Mississippi River and yours is only 45 cents, there is a difference of 42 cents, isn't there?

A. Yes.

Q. And that difference is practically your average profit on the hundred pounds or as you say a thousand cans?

A. Yes, if my statement there where I said I thought we made sixty millions a year is correct, it would seem that what you say is so.

Q. You have enjoyed under the existing rates heretofore nearly 700 miles nearer market, 42 cents on first class less than car
521 load and 28 or 29 cents on your car load business?

A. Yes, and they have enjoyed all the trade in the east, which amounts to nine-tenths of the trade all over and I cannot touch it.

Q. You say that you are able to do about two million of business in New York City?

A. No, I just estimated that; I wouldn't say that.

Q. Do you want to take that back?

A. No, I do not.

Q. Let it stand?

A. Yes.

Q. Don't you get a large part of your raw material by water?

A. Not a pound.

Q. It comes in over what road?

A. Most all of the roads from the east.

Q. Do you pay the freight on that?

A. No, that is put in on the price. It don't make any difference I pay the freight in a way.

Q. Just the same as the Cudahy man pays the freight on your cans in a way?

A. Yes.

Q. Don't Cudahy usually buy his material free on board at the point of origin?

A. I don't know about that.

Q. If you lost all your business at the Missouri river cities, take at the outside 30,000,000 cans, what would be your loss in profits?

A. You have the figures there, you could figure that. In profit you mean?

522 Mr. WALTER: Yes.

A. The profit is very narrow on that stuff.

Q. If it is 6 per cent on your business——

A. Five per cent in general.

Q. Five per cent would be \$12,000, wouldn't it?

A. Yes, sir.

Q. Thirty million cans would weigh three thousand hundred pounds?

A. Yes.

Q. And the reduction you say is five cents on that which would be \$150?

A. It would be \$1,500.

Q. And the profit of \$12,000 where you are making \$12,000 profit on a transaction, do you say to cut that profit \$1,500 would lose you that business?

A. Yes, sir, if Mr. Cudahy or any other good purchasing agent could get that \$12,000 for fifteen hundred less, he is going to take it.

Q. What is the reason why you could not cut it fifteen hundred dollars? Do you want to throw away over \$10,000 profit?

A. If the man from New York, through the benefit of his raw materials can land the stuff in Omaha at the same price that I can and still get fifteen hundred dollars more, why should he get the fifteen hundred dollars and why shouldn't I?

Q. Then doesn't it simply resolve itself down into the question of whether the other man pays \$1,500 freight?

523 A. No.

Q. In other words, the handicap on that man in doing business in competition with you at the Missouri River cities?

A. There is a handicap for me if he gets the benefit and I do not.

Q. In other words it is in his favor, the concession is of \$1,500?

A. Yes.

Q. But you have had a difference in the rate of the finished product of 28 cents on every hundred pounds sold?

A. There is a difference also in the raw materials to take into consideration there.

Q. You don't know what that is?

A. It is six to one and half a dozen to the other when you get to the Missouri River. We are speaking in generalities now. I know that when we get to the Missouri River the New York man gets there on about an even basis with us, putting everything in.

Q. You are on an even basis when you get to the Mississippi River?

A. Yes.

Q. You were able last year on the existing rates to make \$12,000 profit and drive him out of that business at the Missouri River?

A. I didn't drive him out of the business.

Q. You got the business.

A. Yes.

524 Q. Is not the whole matter so far as it concerns you in this case whether you get \$12,000 profit or whether you get \$10,500 profit?

A. Not necessarily.

Q. The only difference is the freight rate isn't it of five cents on the hundred pounds?

A. No, there are other differences besides that.

Q. That is all you have been talking about and all we have been talking about, isn't it?

A. Yes. Now why, if we land there even, why should he get five and why shouldn't I get five?

Q. The question is put to you. If you know any reason give it?

A. I don't know any reason why he should have it and why I should not.

Q. You know it is the rule in rate making that the longer the haul the less the rate per ton per mile?

A. Then the little fellow in between might as well be wiped off the map.

Q. That is his misfortune of location, isn't that true?

A. Yes, in a good many senses of the word.

Q. You don't know anything at all about the general conditions in the Central Freight Association territory of people in all classes of business handling these first five classes, do you?

A. Except this, that we are all in the same box, we are all in the same position, aren't we?

525 Q. Are they all on the same margin of profit as yourself?

A. I don't know that.

Q. You don't know anything about it do you, except your general impression?

A. I know about my own.

Q. That is all you do know, isn't it?

A. That is all I know positively.

Q. All the rest of it is a mere guess, isn't it?

A. I do not think that any manufacturing concern today is doing business on a very large margin of profit, competitive business.

Q. Suppose your competitor in New York City had been paying an unreasonable rate because unreasonably high and you had had a reasonable rate, do you say that his rate should not be reduced simply because he sells the same article that you do?

A. If it is unreasonable I think it ought to be put within the bounds of reason. I think where the unreasonable part comes in is not putting us on the same footing.

Q. Suppose your competitor in New York City has been paying all these years an unreasonably high rate to the extent of 15 cents or 10 cents a hundred pounds, do you say that his rate should not be reduced when you have all this time been paying only a just and reasonable rate? Please answer yes or no and then you can qualify it?

The WITNESS: If he has been paying an unjust rate?

526 Mr. WALTER: Yes.

A. I do not think I ought to be the judge of that. I would say though that I do not think anybody ought to pay an unjust rate.

Q. If he is paying an unjust rate and you have been paying a just rate, should that fact prevent his rate being put upon a just and reasonable basis?

A. If the change of his rate is going to disturb business all over this country and if he has had for twenty or thirty, I don't know how many years this thing has been established, if his rate has been established and they have made no objection to it and that rate was made supposedly so as to equalize things up to the river say, and if the change, whether it is to my advantage or whether it is to his is going to disturb those relations on which we have based all our contracts then I say do not change it.

Q. Suppose your competitor at New York City has received all these years ten per cent reduction on his freight in the way of a refund, and when the law prevents that he brings an action to reduce that rate, and then his rate is reduced, not as much as the refund, but less, are you in any way put under any greater handicap than you were all the time he received the refund and you received none?

A. In other words then, for ten years he has been getting a rebate and I have not.

527 Q. You contested with him in the market upon that basis?

A. Then I should think he ought to pay what I am paying because he has been getting a benefit for ten years that I have not.

Q. If he is not put down on the same basis you have still got an advantage over him?

A. I think he had better come and locate where I am and get on a competitive basis.

Q. Suppose he should say that you had better come to New York where you can get your raw material without having to pay this freight on it into Detroit?

The WITNESS: For Missouri River business?

Mr. WALTER: Yes.

The WITNESS: Six to one and half a dozen to the other.

Q. If, during all this time you have competed at the Missouri River cities on your own rate and your competitor had a much less rate than he would have under this order, do you say that this order unjustly discriminates against you?

A. Yes. If he has had a ten cent rebate for ten years I have been discriminated against for ten years haven't I?

Q. If he got a ten cent reduction prior to this last year and now only gets five cents, haven't you got an advantage of five cents over him, over what you had in the past ten years?

A. If he did get ten I think I ought to have ten for the next ten years.

528 Q. To make up for it?

A. To make up for it.

Q. But if because of the violation of law——

The WITNESS: Oh, yes.

Mr. WALTER: It makes a difference doesn't it?

A. Yes.

Q. You want to be fair don't you?

A. Certainly I do.

Q. You do not come here of your own voluntary accord, do you, you have been solicited to come here, haven't you?

A. Yes, sir, I came here for two reasons, one of them was for this and one to appear before the Trans-Continental Committee.

Q. At the solicitation of the railroads you are appearing here?

A. Yes, sir, I want this thing regulated and want it fair to everybody.

Redirect examination.

By Mr. McHUGH:

Q. You have a personal business interest in this case?

A. Yes, sir, I should say I did.

Q. How long have you been in business?

A. About seven years.

Q. Explain what you mean when you say that considering raw material into Detroit and your rate out of Detroit to the Missouri

529 River in comparison with the New York man's rate through to the Missouri River it is six to one and half a dozen to the other?

A. Yes, sir.

Q. Just what did you mean by that?

A. I meant that our prices are all made partially on the cost of raw materials? That is the first thing that comes in. The freight comes in next to the raw materials. Most of our raw materials naturally are fiber and some tin. Our cost is more a great deal than the New York or seaboard or whatever you call it cost those fellows down on the coast, because they have no freight to pay and they just simply add the freight on to ours and it costs that much more.

Q. So when you take your raw material in the east and ship to Detroit and then ship your finished product to the Missouri River, your freight charges will aggregate what the freight charges are for the New York man?

A. The difference between the raw material and the finished product is very little.

Q. So that the lower rate that you get from Detroit to the river as compared with the New York man is balanced by the fact that you have to pay the freight on the raw material from New York to Detroit?

A. Yes, sir.

Q. What is the name of your firm that runs the can business?

A. Kerniweid Can Company.

Q. How long has that been in business?

530 A. We arbitrarily changed the name a year ago last February. It is the same business *business*. It used to be called the Gem Fiber Package Company. It is the same business exactly.

Recross examination.

By Mr. WALTER:

Q. Isn't it true that the selling price of this raw material is arbitrarily fixed by what is known as a trust and the prices are regulated according to the location of the selling point?

A. They have zones, what they call zones. Down on the seaboard they do not have any freight to pay and therefore it is so much cheaper. West of I think Pittsburg and Buffalo you have to pay so much more. It is just a matter of difference in freight.

Q. What is the price you pay?

The WITNESS: For what?

Mr. WALTER: For this raw material.

A. We have several kinds of it. I cannot tell you the details of that without my books.

Q. I will ask you whether you will do this, send to Mr. Bennett a statement which shall be made part of your testimony and just as much under oath as anything else you have said, as to what you pay for that raw material, and let it go in as part of your testimony. Do

531 you have any information as to what the cost of this same material is in Atlantic seaboard territory?

A. I cannot give it to you off-hand.

Q. You can get it and send it in as part of your testimony?

A. Yes.

Q. Will you do that?

A. Yes, I will be very glad to.

532 JOHN L. EVANS, a witness produced on behalf of the complainants, was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. Give your full name?

A. John L. Evans.

Q. Where do you reside?

A. Cleveland, Ohio.

Q. What is your business?

A. I am connected with the Sherwin Williams Company.

Q. What is the nature of the business conducted by that company?

A. Varnishes, paint, and so forth.

Q. Are they manufacturers of the product?

A. Yes, sir.

Q. Where is your factory?

A. At Newark, New Jersey, Montreal, Cleveland, Ohio, and Kensington, Illinois.

Q. In what capacity are you connected with the Company?

A. I handle the traffic department for the organization.

Q. How long have you occupied that position?

A. About five and a half years I should say.

Q. Do you know the rate situation as it exists, so far as the relation of the rate from say Cleveland, Ohio, and seaboard territory to the west is concerned, in a general way?

A. I have a knowledge of it.

Q. You may state whether that relation enters into the business and commercial conditions of Cleveland?

533 A. It does at all points.

Q. Does your company ship from Cleveland quantities of product west to the Missouri River?

A. We do from Cleveland and from Kensington, and sometimes from Newark.

Q. Suppose the order of the Interstate Commerce Commission involved in this case should go into effect and the class rates be reduced for shipments originating at the Atlantic seaboard, between the two rivers, what effect would that have upon the business of your company at Cleveland and at Kensington?

A. I might explain in this way, raw material brought into the seaboard and shipped west to Chicago and the Mississippi River is on the basis of fourth class rate. The same conditions are in effect with regard to the manufactured product. Were the manufacturers

on the seaboard allowed the differential of four cents between the rivers, I can see no other way but what it would actually close the varnish factories west of Buffalo, if such a combination were strong enough or cared to control the entire out-put.

Cross-examination.

By Mr. WALTER:

Q. What is the total business of the Sherwin Williams people?

The WITNESS: In what way?

534 Mr. WALTER: In total volume in money value?

A. I know nothing of the money end of it.

Q. Do you know anything about the profit of the business?

A. Nothing.

Q. How do you know then that four cents on the hundred pounds would close the factories west of Buffalo?

A. Would not the eastern manufacturer take advantage of such a situation?

Q. That is not the question I asked you. How do you know that it would have that effect?

A. It is apparent upon the face of it that it would.

Q. Four cents a hundred pounds is as you say the difference?

A. Yes.

Q. What is paint worth a hundred pounds?

A. I could not tell you.

Q. How do you know that four cents a hundred pounds would eat up the profit on a hundred pounds of paint?

A. I say it would give the eastern manufacturer an advantage of locating on the seaboard and shipping to the Missouri River.

Q. He has to ship much further and pay a higher rate on his paint doesn't he?

The WITNESS: From where?

Mr. WALTER: When he ships from the seaboard than the man that ships from Kensington and Cleveland?

A. He does. His raw material is at hand and the commodity moves on the same basis of rate, fourth class rate.

535 Q. What is the rate on raw material into Cleveland?

A. Twenty-five cents.

Q. On a hundred pounds?

A. Yes, sir.

Q. What is your rate out to the Mississippi River?

A. Fifty and a half cents.

Q. What is it for the man who ships from the seaboard direct?

A. The same rate. The same rates apply, that is fourth class to the river I believe ought to be 40 cents, hadn't it? You can base that on Chicago and make it a plain case if you wanted to and cut out Cleveland.

Q. From the seaboard territory to the Mississippi River, what is the fourth class rate?

A. I thought it was forty and a half, they say it is forty-one.

Q. Forty-one as against your rate of forty and a half?

A. Yes.

Q. To begin at the basis of this, what is the rate on your raw material into Cleveland?

A. Twenty-five cents.

Q. From the seaboard?

A. Yes.

Q. Your rate from Cleveland on the finished product to the Mississippi river is how much?

A. Twenty-three cents.

Q. Which makes forty-eight cents?

A. Yes, sir.

536 Q. What is the fourth class rate on seaboard freight to the Mississippi River crossings?

A. I think it ought to be 40½ or 41.

Q. You don't know what the margin of profit is at all, do you?

A. No, sir.

Q. When you said that it would have the effect of destroying the manufacture in the Central Freight Association territory, you are going on a theory that the 4 cent margin on a hundred pounds would destroy the profits of that business?

A. I don't know whether it would destroy the profit or not. It places the business in a position where there is four cents per hundred as against the Cleveland or Chicago manufacturer.

Q. That is the only basis for your statement isn't it?

A. That is enough.

Q. That is all, isn't it?

A. It is apparent from that statement that that is the hardship under which the Chicago or St. Louis manufacturer would labor.

Q. That is all that you know of that four cents of difference in the freight rate?

A. Yes, sir.

Q. You do not know anything at all about the cost of production, the selling price, the revenue derived, the income, the financial standing at all of your concern in its business?

A. No, sir.

Q. Where do you get your raw material?

537 A. From New Zealand.

Q. It is imported?

A. Yes, sir.

Q. Is it imported on a through rate from New Zealand?

A. No, sir.

Q. Local rate from the port to Cleveland?

A. Yes, sir.

Q. What is the port of entry?

A. New York.

Q. Does it come to you by water or rail?

A. By water.

Q. What is the water rate?

A. I could not tell you.

Q. Much less than the rail rate isn't it?

A. The water rate into New York?

Q. No from New York into your place?

A. The usual differential.

Q. What is the differential?

A. About four cents.

Q. You manufacture what sort of paints?

A. All kinds of paints.

Q. Prepared paints?

A. Yes.

Q. Ready for use?

A. Yes, sir.

Q. When you have a shipment in the west you send it from the factory nearest don't you?

A. From Chicago.

Q. You have a factory in the seaboard territory?

A. Yes.

Q. It takes the seaboard rate?

A. Yes, sir.

Q. You have two factories in seaboard territory, Montreal takes the seaboard rate, doesn't it?

A. Yes.

538 Q. You do ship from those two places into Missouri River cities don't you?

A. No, sir, not on paint.

Q. A great deal of the lead you use in your paints is bought in this country isn't it, produced in this country?

A. Yes, sir.

Q. Whereabouts does that come from?

A. From Coffeyville, Kansas.

Q. The further east you go the higher freight rate you have to pay on that raw material?

A. Yes, sir.

Q. So that to have your factory at Kensington you have an advantage over a man who has a factory at New York?

A. No, sir.

Q. On that freight rate on lead?

A. They have smelters east.

Q. That lead is mined in the Mississippi valley, isn't it?

A. I don't think so, not what they manufacture there.

Q. Where is it mined.

A. It is brought around by vessels.

Q. Where?

A. From Mexico I should judge for one territory.

Q. The lead you get comes from Coffeyville?

A. Yes, sir.

Q. That is in the United States?

A. Yes, sir.

Q. In the state of Kansas?

A. Yes, sir.

539 Q. I will ask you if it is not true that right in the city of Omaha is produced as much white lead as any place in the United States, white lead paint?

A. I could not answer that question, I don't know.

Q. It is manufactured there and you compete with the man who makes it right there, and the freight rate between Kensington and Cleveland and Omaha is an advantage which that man has over you isn't it?

A. It is no advantage. I do not believe the eastern or seaboard manufacturer would come into that territory.

Q. Don't you do any business in that territory?

A. We do.

Q. If white lead is manufactured right in Omaha where it pays no freight on the finished product, that manufacturer has an advantage over you of the difference between the freight rate you pay and no freight rate, isn't that true?

A. Yes.

Q. So that the reduction of the rate doesn't make any difference on whether you can do business from Cleveland or Kensington at Omaha or not, on white lead?

A. The case might be reversed.

Q. No, I want you to answer my question.

(Question repeated.)

A. No, sir.

Q. Then if you can do business there when you have got a handicap of the rate between the rivers 23 cents and the rate from
540 Cleveland up to the rivers or Kensington up to the rivers your profit certainly is something over that amount on each hundred pounds isn't it, it has to be, doesn't it?

A. The raw materials coming from that territory I should say yes. Raw materials imported from foreign countries, no.

Q. When you get your lead at Coffeyville you are farther away from it than Omaha, aren't you, and have to pay a higher rate?

A. Yes.

Q. Then isn't it true that four cents could not by any possible means destroy your business if 23 cents and 25 cents did not destroy it?

A. My remarks with regard to the destruction of the business related to varnish.

Q. You are speaking only of varnish?

A. Yes, that is why I called attention to that phase of it.

Q. So that this four cents deduction is not a killing matter at all in your business is it, according to your own statement?

A. It is, on the varnish certainly it is.

Q. On your other business?

A. I cannot say that it is. I do not believe that it ought to be.

Q. If you can sell white lead at Omaha after paying 23 cents and 25 cents or 48 cents—

The WITNESS: Do not confuse those rates with varnish.

Mr. WALTER: I am talking about white lead.

541 A. You are using the same basis on white lead.

Q. Does it take the same rate?

A. No, sir.

Q. What class is white lead?

A. Sixth.

Q. There is no reduction or, that at all from seaboard territory, the reduction was only on the first five classes?

A. Yes, there is no reduction on that.

Q. So that there was no reduction on the white lead?

A. No.

Q. What classification from Mississippi west?

The WITNESS: On the lead?

Mr. WALTER: Yes.

A. I would rather think there would be commodity rates.

Q. Not covered by this at all?

A. No, not on the lead.

Q. So that all your business is carried on commodity rates and not on these class rates?

A. No, sir, I did not say it was.

Q. I am speaking now about paints?

A. Not all, no.

Q. What percentage of your business goes in commodity and what under class rates?

A. I would not answer the question from a percentage standpoint.

Q. Give it some other way?

A. The crude materials from a paint standpoint are under commodity rate. The zinc oxides are. The leaded zincs are.

Q. Name what else is under commodity rates?

A. The linseed oil between the rivers is.

542 Q. Give what else is under commodity rates?

A. That covers the basis.

Q. On your finished paints shipped from Kensington to Missouri River points does that go under the commodity or class rates?

A. Class rates.

Q. What class?

A. Fifth.

Q. When it is shipped from seaboard what does it take?

A. Fifth class through.

Q. And the reduction on fifth class by the Commission was how much?

A. Three cents.

Q. Do you say that the three cents on the finished paint would put you out of business?

A. I don't think it would on paint.

Q. What is there that it would put you out of business on?

A. The varnish end of it.

Q. How much is the varnish business?

The WITNESS: From a financial standpoint?

Mr. WALTER: Tonnage.

A. If I said eight thousand tons it would be about right.

Q. In a year?

A. Yes.

Q. Where are your competitors?

A. East.

Q. All east?

A. East and at St. Louis and Chicago.

Q. You have competitors at St. Louis and Chicago?

A. And Detroit.

543 Q. The same reduction so far as it affects anybody affects them just as much as it does you?

The WITNESS: What reduction do you speak of?

Mr. WALTER: That the Commission by its order has made, the reduction made by the Commission applies alike on your competitors as on you?

A. Yes.

Q. So that it would not affect your business at all?

A. West of Buffalo, yes.

Q. You say it would affect it west of Buffalo or would not?

A. It affects all factories west of Buffalo.

Q. Alike?

A. Yes.

Q. Your chief competitions are in that territory?

A. Yes, sir.

Q. So that you would be in the same relative standing under the Commission's order as prior thereto?

A. Yes, sir.

Redirect examination.

By Mr. McHUGH:

Q. On this varnish business you have competition in the seaboard territory?

A. Our heaviest competition is seaboard territory.

544 Q. The reduction ordered by the Commission in favor of those competitors would give them an advantage over you and all your competitors west of Buffalo of the amount of the reduction?

A. Yes, sir.

Q. And that amount of reduction would be that much gain to them?

A. Yes, sir.

Q. And business would seek the point of greatest advantage?

A. I believe it would. That is natural.

Q. That is why they would go where they could get the advantage?

A. Yes.

Cross-examination.

By Mr. Atwood:

Q. Assume for a moment that the profits you were making was 20 cents per hundred pounds and the new adjustment of rates occasioned a diminution of profit to 16 cents, do you fancy that the establishment that you have there would be wiped out of existence and they would refuse to do business because they have to absorb this loss of four cents?

A. I think so.

Q. You think they would go out of business at a profit of 16 cents on a hundred pounds?

A. There is no question but what the eastern manufacturer would fill the territory with their salesmen and get the business, until you could not do business at a profit.

Q. They could not take the business away from you as long as you met their prices?

545 A. I hardly see the necessity for making such a cut.

Q. The question is not what you see in the way of necessities, but since you are here as a business expert you are to answer the question as to whether or not in your judgment as a business man your house would go out of business so long as it could meet its competitors and do business at a profit. Do you say it would do so because the profit was not as great as they are making now?

A. I could not say what the profits were, I could not answer the question that way. It is natural to suppose they would.

Q. That is a supposition based on the fact that there might be a reduction of profit that would be sufficiently large to drive them out of business?

A. There is no question of it.

Q. Let us assume for a moment that the profit was a hundred per cent, you would not think a man would go out of business solely because he reduced his profit to 96 per cent?

A. I do not think so.

Q. Consequently the amount of profit is largely determinative of the fact as to whether or not the loss occasioned by an increased freight rate is going to drive him out of business, isn't that true?

A. Yes.

Q. As long as you do not know what the profit is you cannot tell what the effect of this increased freight cost is going
546 to be on that basis, can you?

A. No.

Recross-examination.

By Mr. WALTER:

Q. Did you say a moment ago that your principal competitors in the varnish business were located in this territory, Central Freight Association territory?

A. They are located east, the largest competitors.

Q. Where?

A. Our competitors are as I said at Detroit, Chicago and St. Louis.

Q. That is all in Central Freight Association territory, isn't it?

A. Yes.

Q. Not affected by this rate at all. In other words it bears alike on them as on you?

A. Yes, sir.

Q. Suppose that the rate that has been paid by the man from seaboard territory had been an unreasonably high rate to the extent of ten cents we will say and your rate was a reasonable rate, is that

any reason why their rate should not be reduced to a reasonable basis?

A. No, sir.

Redirect examination.

Mr. McHUGH:

Q. But if the rate that you paid for your raw material from the east on your varnish product added to your rate on your finished product to the river was the same or higher than the rate from the seaboard on the finished products, would the seaboard rate be unfair as to you?

A. Yes, sir.

Q. Would that be unjust to the seaboard shipper as against you?

A. Yes, sir.

Q. If the seaboard shipper shipped through at a rate to the Mississippi and you got a rate on your raw product to your factory and a rate on your finished product from your factory which, added together were the same say, so that you could do business and he could do business that would be a fair adjustment of the rate as between you and him?

A. Yes.

Q. And that is the condition?

A. Yes.

Q. So that there is no undue rate charged him as compared with you?

A. No.

Recross-examination.

By Mr. WALTER:

Q. But if his rate is ten cents too high for the service performed for him and yours is a reasonable rate for the service performed for you then the fact that your rate has been in existence and that his has been in existence is no reason why he should not have a reasonable rate is it?

A. The reasonable rates are made to cover market conditions.

548 Q. Doesn't it have something to do with the cost to the carrier and the benefit to the shipper?

A. I have demonstrated very clearly where the raw material comes from.

Q. Let me have an answer yes or no to this question and then you can qualify it: If your competitor from seaboard territory has been paying ten cents a hundred pounds more than the railroads were entitled to have and you have been paying only what they were entitled to have, would the fact that business had been done on that basis require that they should still pay the ten cents unreasonably charged to the carrier?

A. The business location of the competitor has everything to do with it.

Q. I want an answer yes or no as to whether that is any justifica-

tion for a continuance of the unreasonable charge and then you can explain it?

A. I have explained that—

Mr. WALTER: Please repeat the question.

(The question was repeated.)

The WITNESS: The question is put in a way that I do not care to answer flatly.

Q. What is the trouble with the question?

A. The fabric of rates made to the Mississippi river and Chicago have been a standard for years. I have explained very
549 plainly that the raw material moves under fourth class rates. The finished product moves the same at the same class rates. There has never been for the last twenty-five years occasion for a difference such as you cite in your question.

Mr. McHUGH: He is assuming if that were so.

Mr. WALTER: If that were so what is your answer, yes or no.

A. I am just coming to that. Then the adjustment should be made at the point at which the rates break and not let the man suffer at Cleveland or St. Louis or Chicago.

Q. The through rate we are talking about from point of origin to destination.

The WITNESS: Made up on what?

Mr. WALTER: Not made up on anything. A rate I am speaking about, not applying it to this case, but if your competitor has been paying ten cents more than a just and reasonable charge for ten years and you have been paying only a reasonable charge during that time, is that any reason why he should still continue to pay that ten cents more than a reasonable rate?

A. No.

Recross-examination.

By Mr. ATWOOD:

Q. Your competitors have to get their raw material from substantially the same sources that you do, do they not?

550 A. Yes, sir.

Q. And your chief competitors are in the same freight association territory in which you are?

A. And at the seaboard. Our chief competitors are at the seaboard. The largest manufacturers are at the seaboard.

Q. What are the names of them?

A. Murphy Varnish Company and the Standard.

Q. Where is the Murphy Varnish Company?

A. Newark, New Jersey.

Q. And the Standard?

A. New York.

Q. What is the material that is imported?

A. Crude gums, varnish gums.

Q. Whereabouts is it, New York city or New York state that the Standard Varnish Company's factory is?

A. At Newark and New York City or Brooklyn, I am not sure.

Q. Are those the only factories that they have?

A. I think they have others, I don't know the locations.

Q. Do you know of any one further west than those that you have named?

A. They have a factory at Chicago.

Q. That is the Standard Varnish Company has one at Chicago?

A. I think so.

Q. As you understand the management of that business the western business would be done at Chicago?

A. To take care of the western territory.

551 Q. So that factory is in the same freight association territory in which you are at Cleveland?

A. Yes, sir.

Q. Of course freight conditions in and out are approximately the same?

A. Yes, sir.

Q. I would like to have some notion as to the quantity of New Zealand stuff that comes in.

The WITNESS: In tons?

Mr. ATWOOD: Yes.

The WITNESS: The gums you mean?

Mr. ATWOOD: Those are gums are they not?

A. Yes.

Q. That some tropical trees produce?

A. Yes.

Q. In tonnage what would that amount to?

A. I would say ten thousand tons.

Q. As compared with the finished output how much?

A. Increase the tonnage by five or eight thousand tons for the finished products.

Q. There would be added to the tonnage resulting from the gums enough to make five or six thousand tons more?

A. Yes.

Q. What is the proportion in dollars and cents the volume of business from a monetary standpoint of the lead and zinc paints on the one hand and the varnishes on the other in tonnage?

A. In tonnage I should think it would be on a basis of 30 per cent for the varnish.

552 Q. Seventy per cent for the lead and zinc paints?

A. Yes, sir.

Mr. McHUGH: These companies that have factories here in Chicago as well as in Newark ship today to the Missouri River from their western factories?

A. Yes.

Q. Suppose this reduction goes into effect and it would be cheaper to ship from the eastern factory would they ship from there?

A. We would.

Further cross-examination.

By Mr. WALTER:

Q. And the railroads would get much greater revenue out of that shipment than they are getting?

A. Not a cent more.

Q. Is not the rate higher from Newark to the Missouri River than from Chicago?

A. I have told you that the raw materials and manufactured products are on the same basis.

Q. You said that if it were cheaper to ship it from Newark to the Missouri River cities than from Chicago it would be done.

A. It would under the present basis.

Q. And that would give them a much higher revenue when hauled from that point than when hauled from Chicago. Of course it is so much longer haul, isn't it?

553 A. It wouldn't give them any more.

Q. Don't they get anything at all for that thousand miles?

The WITNESS: Just repeat that.

Mr. WALTER: Would not the railroads get more for hauling that finished product from Newark to Missouri river cities than from Chicago to Missouri River cities?

A. They have to haul the raw material.

Q. Didn't you say that the finished product contains fifteen or sixteen thousand tons as against ten of the raw material?

A. From a tonnage standpoint, yes.

Q. The revenue is based on the ton rate isn't it, the amount carried?

A. Yes, sir.

Mr. McHUGH:

Q. The service from a commercial standpoint that is rendered by the railroads in hauling any amount of your product between the Mississippi and the Missouri River is the same identical service commercially, from a commercial standpoint as that service when rendered for your competitor at the seaboard, they haul it between the rivers for both of you?

A. I should say it ought to be.

Mr. WALTER: Then there ought to be the same identical rate charged on all traffic going between the same points 554 & 555 without reference to the point of origin of those classes?

A. There ought to be the same relative——

Mr. McHUGH: Same rate for you as to the New York shipper between the rivers.

A. Between the rivers, yes.

Mr. WALTER: If it should be the same rate when it is going to the Missouri River cities, should not it be the same rate when it is going to points beyond the Missouri River cities?

A. Yes, sir.

Q. Pacific coast, for example?

A. Yes.

A recess was taken to 1:30, at which time Mr. McHugh announced that he had no further witnesses and a continuance was taken to Wednesday next.

556 On Wednesday, February 3, 1909, at 11 o'clock, A. M. the parties met at the Committee Room of the Jefferson Hotel in St. Louis, Missouri and the said hearing was continued as follows: Present, the same solicitors as heretofore.

CHESTER J. MCPHERSON, a witness produced on behalf of the complainants, was duly sworn and deposed as follows:

Direct examination.

By Mr. FYFFE:

Q. What is your name?

A. Chester J. McPherson.

Q. Where do you reside?

A. St. Louis.

Q. What is your business?

A. Assistant to the General Manager of the Missouri Pacific.

Q. How long have you occupied that position?

A. About four years.

Q. Before that what position did you hold?

A. I began my railroad work as telegraph operator and served as a station agent, train dispatcher, yard master, chief clerk to General Superintendent and Master of Transportation.

Q. Master of transportation with what road?

A. With a part of what is now the Pennsylvania system.

557 Q. How long have you been in railway business in the city of St. Louis?

A. About four years.

Q. Are you familiar with the mode in which traffic, freight, is handled in St. Louis which comes through from eastern connections?

A. By the Missouri Pacific, yes.

Q. The Missouri Pacific railroad has its eastern terminus where?

A. The Missouri Pacific has its eastern terminus west of the Mississippi River.

Q. That is at St. Louis?

A. Yes.

Q. Does it have any rails of its own to Missouri River points?

A. Yes.

Q. To what Missouri River points does it have its own rails?

A. Kansas City, St. Joseph, Atchison, Leavenworth, Omaha.

Q. Does the Missouri Pacific road carry freight received from eastern connections, from St. Louis to those points that you have mentioned?

A. It does.

Q. Will you state the method in which freight is received by the Missouri Pacific from its eastern connections, the freight that I have in mind being through freight destined via the Missouri Pacific Road to Missouri River points?

A. We have three ways that we receive freight from the eastern

lines, the larger quantity being in through cars loaded at seaboard points, the next in importance being the freight that is drayed from East St. Louis to our freight house at Seventh and Poplar streets. The third is in cars that are made up by the lines terminating at East St. Louis, those cars made up by consolidation.

Q. In the last case you mention, the cars are broken in bulk at East St. Louis, if I understand you?

A. Yes.

Q. And the goods are in that case brought to the Missouri Pacific in cars made up at East St. Louis?

A. The method of the car transfer is this. The eastern line delivers the way-bills for the cars, to a clerk who represents our agent at St. Louis but who is stationed at East St. Louis. He Slip bills the car to its destination and also cards it showing its destination. The car is then delivered to the Terminal Railway Association which in turn delivers it to our 23rd street yard at St. Louis. That will apply to the through cars and the cars that are made up at East St. Louis. The freight that reaches us by team from East St. Louis is delivered to us on transfer bills which are also delivered to the clerk and he delivers them to the agent.

Q. Who drays the through freight of this character to your freight house in St. Louis from East St. Louis?

A. The various teaming companies here, Columbia, St. Louis Transfer and other teaming companies.

Q. In the case of the freight that comes across the bridge in cars from the eastern connection, what payment, if any, is made by the Missouri Pacific for that haul?

A. The Missouri Pacific Absorbs the transfer charge of the Terminal Railway Association.

Q. What is the charge?

A. It is two cents a hundred, with a minimum of ten cents a shipment. Any shipment that does not reach 500 pounds or more the charge is ten cents as a minimum, and a dollar a car.

Q. A further minimum of a dollar a car?

A. Yes.

Q. Where the through freight received by your line from eastern connection comes across by dray, what charge, if any is made, and by whom?

A. The Missouri Pacific absorbs in that case the charge of five cents per hundred pounds with a minimum of fifteen cents on any shipment.

Q. The freight that is brought across in drays is brought to your road where in St. Louis?

A. At our freight house at Seventh and Poplar.

Q. You have another freight house have you not in St. Louis besides the Seventh and Poplar?

A. The Missouri Pacific, yes. We have another freight house located at Biddle and Collins streets. We call it the Biddle street freight house.

Q. What freight if any comes to the Biddle Street freight house?

A. That all originates at St. Louis.

Q. That is the local business?

A. Yes.

Q. How does that come there, how is it brought there?

560 A. That is brought there by teams from business houses in the city.

Q. At whose expense?

A. At their own.

Q. There is no expense to the railroad in hauling to the Biddle street freight house?

A. None at all.

Q. Does the business originating locally come to any other freight house besides the Biddle street freight house?

A. Yes, we get freight at Seventh and Poplar also that originates in the city and some at the Cupples station.

Q. Then you get both local freight and freight that comes across from the eastern connection by team at Seventh street?

A. At Seventh and Poplar. That is the only place that we get both.

Q. In what proportion, have you made any estimates?

A. Let me see if I understand you.

Q. I mean in what proportion at Seventh and Poplar do you receive freight originating locally and freight from eastern connections.

The WITNESS: For Missouri River?

Mr. FYFFE: Yes, sir.

A. At Seventh and Poplar the freight, that is excluding from this item the freight that comes in through cars you mean?

Mr. FYFFE: Yes, excluding that.

561 The WITNESS: Just the freight that is handled through the house?

Mr. FYFFE: Yes, sir.

A. It would be in the proportion of 30 to 70 per cent. Thirty per cent of the freight destined to Missouri River points is teamed from connections.

Q. What is done with the freight which comes at Biddle street in teams from the local shipper?

A. That is unloaded into the house by the shipper's drayman and loaded by our own men into the cars.

Q. Have you any computation of what the cost of that is, that process?

A. About 30 to 35 cents a ton. It varies.

Q. Thirty-five would be about the maximum cost?

A. Yes.

Q. Have you made or had made any computation of the average load of the cars which you have loaded in your local shipments at Biddle street?

The WITNESS: Of the shipments from St. Louis through Biddle street house for the Missouri River?

Mr. FYFFE: Yes, sir.

A. The average is a little over 17,000 pounds per car.

Q. All of that is freight originating in St. Louis?

A. It all originates at St. Louis.

Q. Have you any like computation of the average load of cars loaded at your Seventh and Poplar street freight house?

562 A. Yes, the average of 10,759 pounds per car. This is based on three months' experience, July, September and November of the present year.

Q. Is that also true of your computation as to the Biddle street?

A. Yes.

Q. Why were those three months selected?

A. They were selected at random as covering the half year, every alternate month.

Q. Do you know any reason why the average load is so much greater at Biddle street than it is at Seventh and Poplar?

A. Oh, yes, there is a very good reason for that.

Q. What is it?

A. At Biddle street the entire freight received for an entire day would be loaded into the car and in addition the car would contain freight going beyond Kansas City, that is to say instead of the loading of the cars being confined to Kansas City proper or St. Joe or Omaha, freight going beyond Kansas City would also be loaded in those cars and the cars would go to the transfer platform or to the transfer house at Kansas City while at Seventh and Poplar, because of the seaboard freight we make cars for Kansas City proper and usually a certain number of cars per day regardless of the tonnage in order that it may be properly handled upon its arrival. The same thing is true of our St. Joe cars and cars for other Missouri River points, located at Seventh and Poplar.

563 Q. Do I understand that you try to send the freight received from the connecting lines at Seventh and Poplar through quicker than you do the freight originating locally and with that mixed condition in the load?

A. We try to give the small shipments of seaboard freight the same despatch that is given to the car load shipments. For example, all the seaboard freight and the freight received at the Seventh and Poplar Street station for Kansas City and St. Joe up to eleven o'clock in the forenoon would go out that day, would leave St. Louis that day and be delivered in Kansas City the next morning, or St. Joe, at Noon. The later receipts of seaboard freight by team at our Seventh and Poplar street station would go forward on a train leaving at 6:30 at night or 6:40 so we would despatch that freight twice a day from St. Louis whereas whatever freight is left over at Biddle street after the eleven o'clock pull, as we call it, is held over until the next day at eleven o'clock.

Q. You have stated that you receive freight from eastern connections by through cars?

A. Yes.

Q. The contents of these cars may originate at East St. Louis or it may originate further east, that is true is it not?

A. Yes, they originate either at the seaboard or are made at East St. Louis.

564 Q. Have you any computation of the average load per car of the through cars less than car load business received from various seaboard points?

A. I have taken the same months, July, September and November, 1908.

Q. What points have you considered, points of origin?

A. Seaboard points exclusively destined to Missouri River points. The average weight of the freight in these cars is 10,841 pounds.

Q. Those through cars that come to you in that way, destined for the Missouri River are of course foreign cars, are they not?

A. Principally, yes. Occasionally one of our own cars comes to us but very seldom.

Q. What payment if any do you have to make on these cars while they are in your possession making the haul?

A. We pay the agreed per diem among the railroads of the country, 25 cents per day.

Q. Have you made any calculation as to the length of time it takes to make the average haul from St. Louis to Kansas City and return of these cars?

A. I have made a calculation based on the average movement of foreign cars on the road.

Q. Will you explain the method of the calculation?

A. For six months, and that gives an average mileage per car per day of thirty-five to thirty-six miles. That is on foreign
565 cars. Our own cars make somewhat less mileage than that.

Q. On that basis, taking into consideration the distance between St. Louis and Kansas City, what would be the expense resulting from this per diem on your road for the haul to Kansas City and back, per car?

A. It would be between sixteen and seventeen days or four dollars.

Q. That is payable to the eastern connection owning the car?

A. Payable to the road owning the car.

Q. Do those cars always come back from the Missouri River loaded?

A. Oh, no, we haul a great many of them back empty.

Q. Have you any idea of the proportion which come back empty, have you made any computation of that?

A. No, I have not.

Q. Can you make any approximate estimate?

A. I can give our east bound empty car mileage on the Eastern Division. That is the division between here and Kansas City. Our east bound empty mileage for the fiscal year ending June 30, 1908, on the eastern division which is the division between here and Kansas City was seven million thirty seven thousand six hundred and eighty five miles. For the six months ending December 27, 1908, that is the last six months, the last figures we have are
2,914,669 miles.

566 Q. Have you made any computation of the difference to the road of hauling an average empty car and a car with an average load in it?

A. I would have to take our regular statistics on that. We pre-

pare every month for the purpose of testing efficiency a statement showing the freight cost on each division of the road and then calculate our ton miles to ascertain what the cost is per ton mile. That is the freight cost. It does not include general administration or taxes or fixed charges nor anything except those charges that are applicable to actual operation. On the Eastern division for the last fiscal year that cost was 36.48 cents per hundred ton miles, based on the net tons or revenue freight.

Q. What do you mean when you say based on net tons or revenue freight?

A. That is the freight that pays a revenue. It does not include the cost of the tonnage of the car.

Q. What is the average tonnage of the car?

A. The average tonnage of the car is eighteen tons. By applying our experience for the same fiscal year in the ton or freight per loaded car mile we have seventeen tons.

Q. That seventeen tons represents the average in all your traffic?

A. The contents of the cars of all of our traffic. If the 36.48 cents per hundred ton miles represents only the paying traffic and
567 the average of load and the average of car weight is approximately the same we can divide that by two which would make 18.24 cents per hundred ton miles gross and that would make the cost of handling an empty car from Kansas City to St. Louis \$9.33.

Q. Is there any difference in the cost or expense to your road of hauling through cars between St. Louis and Missouri River points, arising from the fact that the freight contained in the cars originates at one point in the east rather than another?

A. The expense of handling the car from St. Louis to Kansas City would be relatively the same provided the contents, the average loading was the same.

Q. Leaving the question of loading entirely out of sight, does it make any difference to you where the shipments contained in the car originates?

A. There would be no special charges attached to one more than the other.

Q. The cost of handling is identical, is it not?

A. The cost in the out-freight house would be the same.

A. And the cost of hauling and everything else in handling the car between St. Louis and Kansas City would be the same would it not?

A. Yes.

Q. Do the conditions in regard to which you have testified, conditions pertaining to your road, the Missouri Pacific, as to the mode of handling through freight business of the kind covered by
568 the order, pertain also in general to the other roads?

A. Handling business from the east between here and Kansas City yes, generally. There is the transfer charge which the western line must absorb out of its rate from here to Kansas City or St. Joe or any of the other Missouri River points. While I do not know the method of freight house handling, I imagine it would be the same to secure the greatest economy and despatch.

Q. The methods adopted by your road for handling both the freight that comes by dray over the bridge from your connecting lines and freight that comes in cars from the eastern connecting line are as economical as the present science of railroading will permit?

A. No, I cannot say that. From an operating standpoint the business could be handled to my mind at considerable less cost.

Q. That is generally true though isn't it, that same state of affairs?

A. Yes. If we were permitted to consolidate this freight, take it to our house and consolidate it and load the cars up to a larger loading we would use less cars. The number of cars moved over the road would be less and the cost of handling that and consolidating that freight at the freight house would save us a great deal of per diem and a large empty return haul of cars.

569 Q. But the methods that you follow are those that are generally followed by the other roads here are they not?

A. I think they are, yes.

Q. They are the methods that seem good to your traffic department are they not?

A. Our traffic department must answer the question. There is an eternal warfare on that question between us.

Cross-examination.

By Mr. WALTER:

Q. What is the reason for the present system of handling this traffic from connections. You say it could be handled in a much cheaper manner. What is the reason for the present method?

A. I suppose it is competitive entirely. That is a question, however, that our traffic people would have to answer.

Q. You cannot answer it?

A. Except in a general way that the necessities of competition, the necessities of giving a quicker movement from the seaboard to destination make to the mind of our traffic people this method imperative.

Q. In your own view this traffic could all be handled at a much less cost than it is handled?

A. It could be handled at the difference of cost between the per diem of the empty car returned to a considerable extent and

570 the cost of the loading in the freight house.

Q. What percentage of the seaboard freight destined to the Missouri River cities is handled through without unloading here? You said a considerable proportion?

A. About 80 per cent.

Q. Does not the eastern line pay for some of the movement of this consolidated freight across the river into St. Louis on to the Missouri River from the seaboard?

A. No.

Q. The connecting line pays none of that?

A. None of that.

Q. I mean by that the eastern line?

A. Missouri Pacific pays it all. The roads west of the river pay it.

Q. Is there any instance where any eastern connection of a Missouri River line pays the cost of movement across the River?

A. I do not know of any.

Q. When the freight comes across by drayage you pay the dray company 5 cents a hundred weight with a minimum of 15 cents on the package?

A. Yes.

Q. And on the traffic that is brought across in cars having been consolidated at East St. Louis, you pay—

The WITNESS: Or through cars.

MR. WALTER: That is true of through cars, yes—two cents a hundred weight and ten cents minimum shipment?

A. Yes.

571 Q. A dollar a car additional?

A. A dollar a car as a minimum.

Q. If there is enough hundred weight in the car or enough shipments to make, at the usual rates, more than the dollar then the dollar is not added to that amount?

A. No.

Q. I believe you said at the Seventh and Poplar house the Missouri River traffic which was brought across in drays was 30 per cent of the total handled at your house?

A. Yes, of the total handled for the Missouri River at that house.

Q. Now that may have originated at any point east of the Missouri River may it not?

A. No, that is all seaboard.

Q. Then you state that the balance, 70 per cent is by local shipments?

A. Yes, sir.

Q. Do you handle nothing at the Poplar Street house which originates at Cincinnati and Detroit?

A. Yes, we handle that stuff but that is negligible. These figures I have given you are purely Missouri River traffic from the seaboard and Missouri River traffic from here.

Q. You do not know what percentage that would be of the total amount of traffic handled from that house to all points west do you?

A. No, I have not taken that into calculation. That has had no particular bearing that I saw in this case and I did not have the figures prepared.

572 Q. You do handle a great deal of freight from St. Louis to all points in the west?

A. Oh, yes.

Q. From that house?

A. Yes.

Q. You do handle freight which comes from all the Central Freight Association territory at that house?

A. Yes, we handle a good deal that comes from there. We handle a good deal of that in car loads also.

Q. You cannot give me any estimate which is any way near correct can you, as to the percentage the seaboard shipments bear to the total amount of traffic handled through that particular house?

A. No, I have not made that up.

Q. In order to correctly apportion the cost which seaboard traffic should bear to the total cost of that freight house you must have the total of all freight handled to all points through that house must you not?

A. No, because that would be determined on the general average of tons.

Q. In order to make a correct basis per ton you would have to have the total tonnage before you could apportion the cost to each one ton wouldn't you?

A. Yes, that would all have to be taken into consideration.

Q. You have not taken that into consideration in this case?

A. I have taken into consideration the result that was accomplished from that calculation, yes, the 35 cents a ton for handling.

573 Q. I am not speaking of that now. That was local shipments you spoke of as being 35 cents maximum?

A. No, all shipments. Everything handled through the freight house.

Q. Whether seaboard or local?

A. Yes, sir.

Q. How much a ton?

A. Thirty-five cents.

Q. You do not know whether it costs any more to handle a seaboard ton in that freight house than to handle a local ton?

A. No, it would not cost any more, it would be just the same.

Q. So that there is no extra cost on the tonnage you handle through that freight house by reason of the point of origin?

A. As far as the freight house cost is concerned there is not, but because of the necessity of moving that freight more promptly the average car loading is greatly reduced which is an element of cost. We would rather have the cost at the freight house in handling than the cost out on the road of hauling a partially loaded car.

Q. Out of St. Louis what proportion of your total freight is received from connecting lines from the east?

A. That would be a hard question to answer. I could not answer it.

Q. Can you give me an estimate approximately?

A. No, I could not do that. Our business out of St. Louis would be our local business in five or six states and would be a good
574 deal of other traffic that not being concerned as I viewed it, in preparing my statistics as applying to this case I did not take any cognizance of.

Q. Have you any idea as to the percentage of the total traffic handled by you out of St. Louis originating with your connections east?

A. That would be practically the same question.

Q. Yes, but I want to see if you have got any idea?

A. No, I have no figures on that. I could not give you an estimate.

Q. Isn't it true that by far the greater portion of your traffic originates locally at St. Louis?

A. No, as I said before, I could not give you an estimate on that. We receive a great deal of car load freight, that is commodity freight. We handle a great deal of coal. It does not originate at St. Louis and it would require an entirely different avenue of investigation to ascertain that.

Q. Let me ask you this then: Have you any idea as to what percentage of the total tonnage handled by you is seaboard traffic of the first five classes?

A. No, I could not answer that any better than I could answer the other. You are putting that in comparison with our entire traffic out of St. Louis?

Mr. WALTER: Yes.

575 A. Anything that would take that into consideration would be beyond my ability to answer you at this time.

Q. Coal is a commodity rate traffic isn't it?

A. Yes.

Q. A great deal of your traffic is commodity traffic?

A. Yes.

Q. And is not covered by class rates?

A. Yes, the great bulk of it.

Q. You cannot give us any definite estimate at all can you, of the cost of handling traffic of the first five classes originating at the seaboard as compared with your traffic handled out of St. Louis?

The WITNESS: Of the same class?

Mr. WALTER: No, of all classes.

A. So far as the classes as I understand it here are concerned, the five classes, I have given you the figures on that.

Q. But I want now to compare them with your whole traffic?

A. I would like to have the figures and I would be perfectly willing to give them to you.

Q. Did you prepare these figures?

A. I did.

Q. Didn't you have somebody do it for you?

A. I had some assistance.

Q. Didn't they prepare any other months than July, September and November?

A. That is all I asked for.

576 Q. Didn't they give you any idea as to what the other months during the same period would show?

A. No, I suppose these are representative months. We took them at random without any particular purpose.

Q. You did not take them because they best favored the theory that you have in this case?

A. Oh, no there isn't any theory that we favor in this case. There is nothing we wish to conceal. We wish to develop the exact facts. If I had the full figures you ask for I would be very glad to give them to you.

Q. Who loads those cars in East St. Louis that you consolidate?

A. The eastern line.

Q. You do not have to pay for that?

A. Oh, no.

Q. There is no cost in the way of house service of loading at all in that?

A. Not to us.

Q. Don't you receive local traffic here that you pay shipping charges on that is not loaded on your line?

A. We may some, yes.

Q. What does that average?

A. We are a creditor in that respect because we have a greater number of industries located on our rails than all the rest put together.

Q. Then they pay you a switching charge?

A. Oh, yes.

Q. And they take that out of the rate?

A. I suppose they absorb that in the rate.

577 Q. When you get it from their line you absorb it out of your rate?

A. That is what we would do, but we do not get any classed stuff in that way. That would be purely commodity switching, reciprocal switching, as we call it.

Q. There are no dry goods jobbers that handle these classes but what are on your line?

A. All that is a different class of business from what we are considering here.

Q. Are there no jobbers or wholesalers who handle these first five classes but what are located on your line whose traffic you handle?

A. We do not make deliveries of these cars to jobbers or houses of this sort. They come and get it.

Q. I am speaking now of when you take it from them to carry west?

A. I do not know of any, no. I do not know of any of this freight that you mention that we would switch cars for.

Q. Is there any lighterage service here that you pay for?

A. I do not think there is any lighterage service in St. Louis, I never heard of it.

Q. Any charge collected of anybody for delivery over to you when it is bound west, either of railroad common carrier of any description?

A. Yes, we pay the Terminal Railroad Association two cents a hundred for all they give to us that comes from the east over the river.

Q. I am speaking of local shipments originating at St. Louis?

578 A. No.

Q. But it is true that when industries which ship that traffic are not located on your rails and other carriers take it west they pay you a switching charge?

A. I do not think this class of freight from connections shows anything in the way of switching.

Q. I am asking you if it does?

A. It does not.

Q. They pay you a switching charge?

A. They do not come to our rails to get it. This class of freight is delivered at St. Louis at the freight houses of all the railroads and loaded into the cars.

Q. That is only true of less than car load shipments, isn't it, those that have private sidings, these large houses and those sidings are not on your line, if you carry it you have got to pay the switching charge haven't you?

A. I do not know of any of those cases.

Q. If that is true you do have to pay it?

A. I do not want to answer a question if something was true. If you had a brother would he be fond of toasted cheese or not.

Q. Take it this way, suppose your competitor is to carry car load traffic of these first five classes originating at St. Louis to the west, he pays a switching charge to you to deliver that to him, does he not?

A. If you go further back to lay your premises and say
579 these five classes are shipped in car load lots by people who have private tracks located on our line and another road should give us a car and it would be loaded and we would deliver that car back to the other road we would charge a switching service.

Q. If it is reversed—

A. I do not know of any such condition. What is the use of discussing an impossible condition?

Q. Isn't it the rule here that if a shipment is to go over the line of a carrier which carrier does not have a side track connecting with the shipper that the carrier who takes it pays the switching charge?

Mr. FYFFE: Are you referring to merchandise covered by the first five classes?

Mr. WALTER: Yes, originating at St. Louis.

A. As I said, there have been no such conditions of which I have any knowledge.

Q. Let us be sure about that. Do you mean to say that all car load shipments of the first five classes originating in St. Louis carried out of St. Louis originate on the line of the carrier that takes it out?

A. I believe so, and to the very best of my knowledge that is the case.

Q. Is there any such thing as a switching tariff?

A. There may be an occasional exception in fifth class freight.

As to that I am not positive, but if there is it is all.

580 Q. There are tariffs covering that are there not?

A. Yes.

Q. So that there must be some traffic or there would not be any tariff?

A. There might be in fifth class traffic, but as I said before I do not know—it is an almost negligible quantity I think.

Q. You keep here in the city of St. Louis a soliciting force to get local business for shipment west?

A. Yes, sir.

Q. You pay them and you pay rental for offices. How much does that amount to for the local business?

A. You will have to ask the traffic department.

Q. It is a material amount is it not?

A. I don't know what it amounts to. I suppose so, but you will have to get the details from the traffic department. I have nothing to do with that.

Q. That would be a charge peculiarly upon the local traffic?

The WITNESS: Solicitation of traffic?

Mr. WALTER: Here in St. Louis, yes?

A. I had a gentleman propound a question to me that that was entirely a charge on interstate traffic and should not be applied to state traffic at any time.

Q. I mean shipments out of St. Louis originating here. It may be interstate or may be state?

A. That is a question that I do not think I am prepared
581 or qualified to answer. I have nothing to do with that part of the work. I may possibly know one or two of the solicitors here, but I would not be able to tell you the number or what they get or what they do.

Q. You were put on the stand and asked as to the cost of handling this traffic as compared with handling the other and I am trying to get out of you whether your testimony was based on the total cost or merely upon that which you gave?

A. I told you that the figures that I used were merely those of operation. They do not take in general administration or taxes or fixed charges.

Q. So that it is not in any wise illustrative of the true relative cost of handling these two kinds, seaboard and local?

A. Yes, it would be. Those factors however, are not considered when we make up our competing figures. If they were the cost would be a great deal bigger, and the figures would be a great deal more than I have given you.

Q. So that in reality when we come to determine which is the greater expense your testimony does not give us the answer does it?

A. My testimony gives you the answer directly and in detail.

Q. You told me that you did not take into consideration the soliciting of freight, the fixed charges, the interest the property used, or anything of that kind?

582 A. The cost that I have given you in figures is the operating cost. If I should add the other matters to that the expense I have given you would probably be doubled and instead of \$9.33 for hauling an empty car from Kansas City to St. Louis it would be \$18.

Q. I am speaking of the cost here in St. Louis of handling the one traffic as compared with the other?

A. If you will permit me I will make a concise statement of the difference in that cost.

Q. If you will make it concise and give it all, all right.

A. If I make this statement I may take in a good deal greater range than I have already taken in my testimony. If you want me

to gather it together I can do so, and cover more fully perhaps than I have and bring in other elements of cost that have not been developed.

Q. We want a statement as to what charges particularly apply to the one traffic that do not belong to the other?

A. My testimony is direct and the answers speak for themselves. In the question that you asked me you attempted to discredit my whole testimony.

Mr. WALTER: I think you misunderstand my purpose in cross examination. I have no intention to discredit but simply to throw light on what you state.

A. You asked me a question and that is an attempt to discredit my testimony when I have answered directly and positively
583 each one of these questions. If you will have that question read I will be obliged to you.

Mr. WALTER: Then I will ask you this question and we may go ahead right here: In giving the cost which applies to the local traffic here you have not considered the cost of soliciting the freight?

A. It does not enter into it any more than the paint we put on the general office building.

Q. That is not the question I ask you. Have you considered it?

A. No, no more than I would the paint that we put on the general office building.

Q. Have you considered at all the property which you use only for local traffic, the interest on that property, the amount invested, fixed charges on it or anything of that sort?

A. I have not testified as to any aggregate cost. I have testified as to difference in the method of doing the work and I have answered the questions that have been asked me on each particular point. Now I have not been asked the questions that you are now seeking to develop.

Q. In order to correctly compare the cost on the ton of one traffic and the ton of the other traffic you would have to consider those things wouldn't you?

A. I have told you positively that there is no difference in the cost of handling one ton through the freight house and another ton.

Q. Let me ask you this question: Is there any difference
584 in the cost to the Missouri Pacific of handling the traffic which originates at the seaboard through St. Louis and that traffic which originates at St. Louis going to the Missouri River?

A. There is a very considerable difference in cost.

Q. What is that per ton?

A. I have not computed it per ton. We can put it on a per hundred pounds basis.

Q. How much is it per hundred pounds?

A. In the first place there is 20 per cent of that traffic on which we have to pay five cents a hundred for transfer at St. Louis.

Mr. FYFFE: What is that?

A. That is on the traffic from the seaboard. We have to pay five cents per hundred pounds for transfer at St. Louis. As a general average it is nearer six because of minimums. On 80 per cent of

the traffic from the seaboard to the Missouri River we are obliged to pay two cents a hundred as a transfer charge at St. Louis. Neither of these charges attach to any of the business loaded locally at St. Louis. Moreover we are compelled to pay on an average four dollars a car as a per diem on the foreign cars in which we receive 80 per cent of this traffic. During the last year we have substantially returned all of those cars empties east bound to St. Louis from Kansas City. Those empty cars cannot be hauled from Kansas City to St. Louis for less than \$9 a car. None of those expenses would attach to our local business unless we used foreign cars and we have

585 had no necessity particularly to do so for the past year.

Q. What was the total that you handled last year of seaboard business to the Missouri River?

Mr. FYFFE: Referring to the whole year, the total during the year.

A. I do not know what it was during the year. I know for three months.

Mr. WALTER:

Q. What was it for three months?

A. For three months, that is July, September and November, the seaboard business amounted to 12,414,622 pounds.

Q. All that is freight of the first five classes originating at seaboard territory and does not include any commodity shipments from seaboard?

A. Not at all.

Q. You say that these cars that come from the east are all foreign cars?

A. There might be an occasional stray system car, but it would not be very likely.

Q. And what about cars loaded here at St. Louis?

A. Those are largely system cars, that is to say at this time, this year we have had a large surplus, running anywhere from 2200 to 11,000 a day of our own cars so we would not be likely to use foreign cars.

Q. You say the per diem is only 25 cents a car?

A. Yes.

Q. You are well aware of the fact are you not, that the statistics of the American Car Service Association show that the average value per day of a car in use is a little over a dollar?

586

A. No, sir, I have no such information.

Q. You are well advised that it is much over—

The WITNESS: Do you mean that just the way you put that question?

Mr. WALTER: That is that the average revenue per car per day is a little over a dollar?

A. That is all right, yes that is true.

Q. You only pay 25 cents, however, for the cars you use?

A. That is true, but we pay 25 cents a day for these cars that we use, that is foreign cars, while we have got thousands of our own standing idle.

Q. That is all taken into consideration.

The WITNESS: So that it is a burden under those circumstances.

Q. You are well aware that in making these figures the railroads of the entire country are considered, both the loaded cars and the empty cars.

The WITNESS: Making what figures?

Mr. WALTER: As to the dollar per day. In other words the 25 cents is not at all compensatory to the owner of the car is it?

A. Well, the—

Q. I want an answer yes or no to that.

A. I will not answer that yes or no because I would not
587 be able to give you the facts if I did. We have tried a good many plans to bring about the return of cars promptly, through the means of per diem charges. We have tried the plan of a per diem and a penalty for thirty days. We have raised that per diem, in fact doubled it and taken off the penalty and then we have reduced the per diem and taken off the penalty. As to the situation as to per diem or its value today in the interchange of cars between railroads it is all in the air. Nobody is satisfied. The reduction of 50 per cent in the per diem took place a year ago and it still stands.

Q. Now let me ask you again, is the 25 cents per car compensatory to the car owner?

A. I do not think it is compensatory to the car owner, but it is a burden on the road that is obliged to use that car when it has got cars of its own that it could use.

Q. You could easily take these cars and load them into your own cars if you wanted to?

The WITNESS: Take which?

Mr. WALTER: The traffic that you carry in the foreign car, you could put in your own car here?

A. I do not think we would get any more seaboard traffic if we did it, at least that is what I am told by our traffic department.

Q. Let me ask you this, if the rate from the seaboard to St. Louis and East St. Louis is the same on the first five classes?

588 A. I suppose it is.

Q. So that the rate of 88 cents for example from seaboard on first class to St. Louis brings the traffic into St. Louis?

A. Well, now, you will have to ask a traffic man that question.

Q. You cannot answer it?

A. I do know this fact, that we have to pay from East St. Louis—that is to say the cost of handling the business from East St. Louis to the Missouri River is a charge in its entirety upon the Missouri Pacific Railway.

Q. And the rate of 60 cents is a rate that applies alike on traffic from East St. Louis and St. Louis, isn't that true?

A. I presume that that is true, yes.

Q. Isn't it further true that in meeting a rate for the carriage of this traffic from the seaboard to the Missouri River one of the elements is that the Wabash gets traffic through without any expenses at St. Louis?

A. No, that is not one of the elements.

Q. When they go through Hannibal?

A. No, not when they go through Hannibal.

Q. They do not cross the river at St. Louis, do they?

A. The Wabash has a line each side of the river.

Q. Which does not cross from East St. Louis to St. Louis, it does not come into St. Louis?

A. Oh, no.

Q. In giving your figures here it is true that you have not
589 considered all the items which may affect the figures have you?

A. Yes, I have considered all the items which could be segregated and applied to the handling of this business at St. Louis.

Q. Only those that you could segregate?

A. I do not believe that there is any item that I have not testified to in detail on the direct examination.

Q. You are an operating man?

A. Yes.

Q. As to the other items, you are not familiar with those outside of the operating expenses?

Mr. FYFFE: That is objected to on the ground that the witness has just stated that there are no other items.

Mr. WALTER: I beg pardon, he did not so state. If you will answer me that question then I am through.

A. There are no other items that would apply to this business specifically that I have not given you.

Q. If there are other items which are material you have not considered them in making your figures?

Mr. FYFFE: Objected to that the witness has stated that there are no other items.

The WITNESS: There are no other items.

Mr. WALTER: That is not the question I asked you. You certainly can answer that question.

A. That goes back to the question of the fondness for cheese.

There is nothing that the railroads have to conceal. They
590 are eager for you to know the whole story.

Q. Let me ask you again if there are other material elements than operating expenses which affect the figures as to cost of handling this traffic you have not considered those elements?

A. (No answer.)

Q. You know whether you have considered anything besides operating expenses.

Mr. FYFFE: Ask him that question.

Mr. WALTER: He said he had not, he has answered that.

The WITNESS: I have not answered that I do not consider anything but operating expenses, if you will pardon me, because I have testified that we absorb in the rate this transfer charge. That is an operating expense.

Q. Let me ask you this, if there are any items which might affect cost other than those you have given—the cost of hauling—operating expenses you have not considered those have you?

A. If there are any expenses connected with this business other

than the cost of operation and the cost to the company for the transfer in the absorption of this cost in its through rate, then I have not considered them.

Cross-examination.

By Mr. ATWOOD:

Q. Shipments originating in Central Freight Association territory or Atlantic seaboard territory, trunk line territory and for we will say Pacific coast terminals or Texas common points or Oklahoma common points have to sustain the same burden in trans-shipment, if trans-shipment transpires from East St. Louis to St. Louis as the through stuff destined for Missouri River, isn't that true? Approximately so I mean?

A. I do not know that it would be exactly the same. There are somewhat different relations. We do not take the Texas freight into Missouri.

Q. Take an L. C. L. shipment we will say from New York City destined for the Pacific coast, it arrives on the east side of the Mississippi River at East St. Louis and is there to be received by your line to be carried on across the state of Missouri and as far as it may be, would there be the same expense incident to getting that stuff out of the car at East St. Louis, the Vandalia line, we will say, as an illustration, and into your car for the purpose of being shipped ultimately beyond the Missouri River as would be true of a shipment having the same origin and having its destination at the Missouri River.

A. Just exactly the same. No difference.

Q. How about it as to Oklahoma common points?

A. That would be the same.

Q. But you say there is a little difference in the Texas business?

A. Yes, there is some difference there because we do not take that stuff across the bridge. We have a line on the other side of the river.

Q. It goes down the river?

A. Yes.

Q. Does not have to come into St. Louis proper in order to go into Texas?

A. No. There is however an expense attending it. I am not prepared to say what it is.

Q. But say we will take less than car load lot shipments originating at trunk line territory and for instance for some point in Kansas or some point in Nebraska, would the expense transpiring at the Mississippi River, St. Louis, be the same as though those same shipments were destined for the Missouri River?

A. I do not see where there could be any difference.

Q. I may ask something that has been asked before. It is not with any purpose of annoying you but because I did not understand.

A. That is all right. I am not easily annoyed.

Q. This switching company here is called the Terminal Railroad Company?

A. St. Louis Terminal Railway Assoc-ation.

Q. Its purpose is to distribute when distribution is neccessary between different roads cars that in the course of traffic have to seek different roads. Would you state whether or not any of this class stuff is gathered by them for delivery to your line or any
593 other line, so far as you know?

A. I do not think there is. All this class stuff is a kind of freight that goes to the freight house.

Q. The thought in my mind was this, that perhaps some of this low class stuff, Iron and steel and paints and so on that move in fourth and fifth class as I understand it might be within that class, and directing your attention to that I will ask you to again answer the question?

A. I said that there might be in the fifth class some of that freight loaded on the rails of other lines than the Terminal Association rails on which we might have to pay a switching charge, or that another railroad would have to pay a switching charge to us where the industry was located on our rails. I do not know what that is.

Q. The amount of that I think you said you had not very clearly in mind?

A. No, it is small.

Q. Is there any rule, custom or other thing that governs your conduct whereby on your own lines we will say you gather up L. C. L. stuff from the different warehouses and factories along your line and bring it to a common point, say your freight house, where it is taken out and placed in other cars to the end of making a complete car load so that you would not be drawing an empty car?

A. We may have one or two arrangements of that kind here in the city. It might be in some of these little suburban points,
594 out here five or six miles that that might be the case, but it would be negligible. This class freight does not originate out there.

Q. When you said there might be I understood you as meaning there probably was some of that business?

A. There might possibly be. I do not know of any. I wish to be careful in my statement to make it accurate, but taking into consideration the fact that these places out there do not originate freight it would not be likely. There might be some such as tobacco and some of these articles that might be picked up.

Q. Have you in mind any rule governing the action of your company that where there is L. C. L. freight amounting say to 5,000 pounds in quantity that that will be taken from the warehouse or factory where it is?

The WITNESS: At St. Louis?

Mr. ATWOOD: Yes, at St. Louis. In St. Louis proper I am speaking of.

A. That might be done as I said before with tobacco or some others, but it would not be a matter of any considerable magnitude, not enough so that I have fixed it particularly in my mind.

Q. In order to make myself fully understood so that there will be no chance for misunderstanding between us now or hereafter I will state what my understanding of your statement is and
595 you will correct me if I am wrong about it, that so far as you know there may be and perhaps is a rule whereby L. C. L. stuff to the amount of 5,000 pounds in a warehouse in the city of St. Louis would be taken by your people to some common gathering point like your Poplar street or Biddle street freight depot and there taken out of the car and when a sufficient quantity had accumulated to be put into another car so as to make altogether a full car load it is sent on its journey?

A. You have in mind Kansas City where that exists.

Q. I did not know but it might exist here. I will tell you that St. Louis could do well in copying Kansas City.

A. They do a good many things in Kansas City that they do not do in St. Louis.

Q. How about that being true in St. Louis?

A. There might be some arrangements with some special business where that was possible. Still as I said before I do not know.

Q. If it was special it would have to be general I presume if the conditions were substantially similar as you understand it?

A. If there is any such rule as that the business done that way would be infinitesimal in comparison with the general business.

Q. A little time since you spoke of the through stuff having
596 smaller car loads in point of tonnage weight than that gathered at your Biddle Street station which as I understand is the point of origin of a great deal if not all your local stuff?

A. A great deal, not all.

Q. That question of loading a car heavy or light is a matter for your own convenience and what you think is the wise and proper railroad management. There is no rule compelling you to load a car heavy or light at the Poplar street house any more than there is at the Biddle street house, isn't that a fact?

A. It is absolutely forced by the competitive conditions.

Q. In order to have greater expedition you do do that?

A. In order to get the freight through. I believe we have so many days from the seaboard to the Missouri River and we have to meet that.

Q. I do not suppose you know and I only ask to make sure the identity of ownership between the railroads here of St. Louis and the St. Louis Transfer Company, the Columbia Transfer Company, you know nothing about it I assume?

A. I know nothing about any ownership of the transfer companies, no.

Q. Do you know anything about there being identity of ownership between the railroads entering here and leaving here and the
597 terminal Railroad Association, I think is the name?

A. I do not think there is any denial of that fact, Mr. Atwood, because the railroad managers are directors in the Terminal Association.

Q. As an operating proposition which would be the wiser thing

to do when you have a foreign car paying 25 cents per diem on it and shipping stuff from St. Louis to Kansas City and then you have grain shipments from Kansas City east over your line, which would be wiser, to ship that grain in that foreign car that you would return otherwise empty or use your own?

A. Well, we would load foreign cars in preference to our own, but in both cases we would still be paying a penalty of the per diem where in one case we could have hauled the merchandise west in our own car and hauled the grain east in our own car and when cars were plenty we could have secured a per diem from the other fellow.

Q. When you loaded up your car in St. Louis, if you had both a foreign car and your own car, if it was L. C. L. business and there was actual physical trans-shipment you would have your choice between using the per diem car and your own. That is a fact, isn't it?

A. I do not believe I get that.

Q. If you had at St. Louis your own cars empty and these foreign cars on which you pay a per diem and there was an actual physical trans-shipment, there would not be any necessity that would
598 compel you to put it into the foreign car?

A. Nothing except the force that I have heretofore referred to. It is a matter of compulsion. No operating man would do it in this way if he could help himself.

Q. If it was a matter of fact that you had plenty of both available at East St. Louis where this shipment transpired what force could compel you to select a foreign car and leave your own standing idle?

A. We do not handle at East St. Louis. The forwarding of the freight from the seaboard to us is entirely within the control of the eastern line. They can send it to us in cars or they can send it to us by wagon. They select the cars. We have no voice in it.

Q. Are we speaking of L. C. L. stuff when we are speaking of the trans-shipment that transpires on the east side of the Mississippi River?

A. Yes.

Q. Is it other than through cars that go back empty or is it the through cars that go back empty? I mean a car that is loaded to its approximate maximum in New York and goes through we will say to the Missouri River?

A. They both would if they were foreign cars, both go back.

Q. In making your calculation as to what is a proper rate to fix east and west, the fact of being a loaded car, a foreign loaded car from St. Louis to the Mississippi River and that same car
599 empty back, would you charge the burden of lugging the empty car back to the east bound or the west bound in determining what would be a proper freight rate east and west, or perhaps that is out of your province and if so I would not think of forcing you in it?

A. I never have made rates.

Q. Very well, the question is withdrawn. I do not want the opinion of a man who don't know?

A. In that expense it would be merely a charge against the only traffic that the car handled.

Redirect examination.

By Mr. FYFFE:

Q. In the case of L. C. L. matter coming from East St. Louis, gathered there, put in cars going through to Missouri River, if that were transferred from those cars, foreign cars, at your freight house in St. Louis to your own cars, who would have to bear the expense of the transfer from the foreign car through your house to your own car?

A. We would.

Q. The Missouri Pacific Railroad?

A. Yes.

Q. That would be an expense in addition to the payment upon the hundred weight at two cents for the haul across the river would it not?

A. Yes.

Q. Could you compare the expense of making the transfer from foreign car through freight house to your own car with the expense of handling stuff that came on truck or dray from the local shipper through your freight house to your own car, which would be greater?

A. There would be no difference in the expense. It would be merely a matter of trucking.

Q. Take the case where the freight is brought to you in cars from East St. Louis to your station and there taken from the foreign car to your freight house and loaded upon your car instead of having the foreign car go through, would that method of handling it be more expensive than the method where you receive it from the local shipper by dray, and handle it through the freight house?

A. Oh, no it would be the same.

Q. Would there be any switching movement in that case of that car coming over from East St. Louis to the freight house?

A. There would be the switching movement of the car from the 23rd street yard to the freight house and back to the 23rd street yard empty.

Q. That would be an extra expense?

A. That would be a small expense, yes.

Q. But an extra expense, an additional expense to the cost of handling the stuff through the freight house and the cost of getting it across the river?

A. Yes, that would be an extra expense.

Q. Could you form any idea of what that expense would be?

A. Not very much, because the chances are that car would be used to send back freight for the eastern roads.

Mr. WALTER: It is three cents less on the hundred pounds where it is brought across in a car than where it is brought across by dray?

A. Yes.

602 J. E. TAUSSIG, a witness produced on behalf of the complainants was duly sworn and deposed as follows:

Direct examination.

By Mr. FYFFE:

Q. What is your full name?

A. J. E. Taussig.

Q. What is your business?

A. Superintendent of terminals of the Wabash Railroad at St. Louis.

Q. How long have you had that position?

A. Four years.

Q. Had you any other business connection with the Wabash Road before that?

A. I was superintendent of what was known as the eastern lines of the Wabash, the Wheeling and Lake Erie for five years prior to that.

Q. That is part of the Wabash system?

A. It is not today.

Q. It was then?

A. It was then.

Q. You are familiar now with the present system of the Wabash in the east where the rails run and the general mode of handling the business?

A. Yes, sir.

Q. What is the eastern terminus?

A. Buffalo.

Q. The road runs north of Lake Erie from there to Detroit does it not?

A. Yes, sir.

Q. How does it come west, what general line?

A. From Detroit to St. Louis.

603 Q. Also a line to Chicago is there not?

A. There is a line from Montpelier to Chicago.

Q. It crosses the Mississippi at Hannibal?

A. There is one from Decatur across the river at Hannibal.

Q. Does the Wabash have rails running to points on the Missouri River?

A. Yes, sir.

Q. What points on the Missouri River?

A. Omaha and Kansas City.

Q. Does the Wabash receive freight from eastern connections destined for Missouri River points?

A. It does.

Q. Does it receive any through business from eastern connections originating at the seaboard?

A. Yes, sir.

Q. Does your road haul L. C. L. freight from Detroit to points on the Missouri River through St. Louis?

A. No, Detroit loads on Kansas City.

Q. Meaning by that answer that Kansas City is the destination of some of the freight loaded at Detroit?

A. Yes, sir.

Q. And that comes via St. Louis?

A. Yes, sir.

Q. You also haul freight from St. Louis itself do you not to the Missouri River points?

A. We do.

Q. To what Missouri River points?

A. Kansas City and Omaha.

604 Q. Does your road get any through car business from the Atlantic seaboard destined for Missouri River points?

A. Yes, from New York.

Q. State how that business is conducted, is it through car business?

A. Through cars from New York to Kansas City.

Q. Have you calculated how much that business amounts to in tonnage?

A. I think we did work it out. You have got the papers. I think it is worked out there on the second page.

Q. Look that over will you and see if it refreshes your mind on the subject? (Handing paper to the witness.) If you have had such computation made, will you state what you find to be the average of the through car business from New York destined to Missouri River points per car?

A. For the year 1908 the average was 10,650 pounds.

Q. Per what?

A. Per car.

Q. Have you made or had made any computations from your records showing the average load of cars made up at Detroit going to Kansas City?

A. Yes, sir.

Q. Have you made any such computation of the average car load from Chicago to Kansas City?

A. Yes.

Q. These car loads refer to what class of freight?

A. Less than car load shipments, merchandise.

Q. That is merchandise taking class rates?

A. Yes.

605 Q. Have you made any such computation of the car loads of the same classes of merchandise originating at St. Louis and to Kansas City?

A. Yes, sir.

Q. I will ask you to look at the statement I hand you and state whether that contains the results of those three computations that is of car loads from Detroit from Chicago from St. Louis destined to Kansas City?

A. The average tonnage has been figured out for a period from November, 1907, to October, 1908.

Q. And is contained in that sheet?

A. And is contained in this statement, yes, sir.

Q. That is a correct transcript is it from your record?

A. Yes, sir.

Q. This sheet covers also car loads from St. Louis to Council Bluffs does it not, car loads?

A. Yes, sir.

Q. Which is denominated here at the top column second from the right as U. P. Trans.

A. Union Pacific Transfer.

Mr. Fyffe offered the paper referred to in evidence and it was marked "Exhibit C," and here follows:

605½

EXHIBIT C.

Statement of Merchandise Loading to Kansas City et al.

		From Detroit.		From Buffalo.		From Chicago.	
		Cars.	Average.	Cars.	Average.	Cars.	Average.
November	To K. C....	55	21632	.....	.....	56	16168
	To A. P....	947	15601	95	18771	2234	14101
December	To K. C....	44	19956	.....	.....	57	13897
	To A. P....	823	14685	101	18983	2064	12636
January	To K. C....	42	20937	.....	.....	53	15127
	To A. P....	865	15122	84	20078	2036	11876
February	To K. C....	39	22556	.....	.....	54	15248
	To A. P....	849	16213	81	18634	1872	12827
March	To K. C....	53	19651	.....	.....	63	16681
	To A. P....	966	16460	95	20337	2100	14168
April	To K. C....	44	18742	.....	.....	.....	.....
	To A. P....	956	14969	93	19459	74	15308
May	.....	.....	.....	.....	.....	2069	14393
May	To K. C....	46	22345	.....	.....	.....	.....
	To A. P....	962	15567	85	21652	.....	.....
June	To K. C....	47	22203	.....	.....	69	17463
	To A. P....	906	15641	72	23439	2153	16881
July	To K. C....	39	20787	.....	.....	63	17067
	To A. P....	851	15154	66	19927	2207	15602
August	To K. C....	46	22254	.....	.....	64	20981
	To A. P....	917	15744	72	20750	2217	15124
September	To K. C....	36	23638	.....	.....	32	17614
	To A. P....	844	15357	62	20826	1986	14814
October	To K. C....	41	22254	.....	.....	32	20025
	To A. P....	981	16134	82	20849	2221	14814
Total	To K. C....	534	23945	.....	.....	617	16749
	To A. P....	10867	15601	988	20257	23159	14765

606

		From St. Louis		Trans.	All points.	
		To Kans. Cy.	To U. P.			
November	92	19346	61	25003	1691	11475
December	94	28890	.....	Report not made	.....	.....
January	103	17512	54	23768	1560	11612
February	98	18268	52	19964	1505	11490
March	111	17708	57	21191	1615	13161
April	125	16974	54	22336	1523	13517
May	106	17421	52	20857	1378	14665
June	106	11978	51	22360	1516	12321
July	117	15506	58	21942	1023	13292
August	147	16335	55	21150	1697	13613
September	135	15781	48	21061	1510	13894
October	137	15070	65	20442	1751	13177
Total	1371	16734	607	21846	17430	12926

607 In addition to the objections heretofore noted the paper was objected to by solicitors for defendants and intervening petitioners as not the best evidence and as evidentiary of nothing.

Q. Are you familiar with the mode in which through traffic is handled from East St. Louis to St. Louis where your line takes through business coming from eastern connections different from the Wabash?

A. Yes, sir.

Q. Does your line the Wabash running west from St. Louis receive L. C. L. freight from eastern connections other than its own eastern line?

A. It does.

Q. In what way is that freight brought across the river to the Wabash running west?

A. It is brought by the transfer companies, handled by the transfer companies and delivered to our Fourth street station, Broadway station.

Q. Has the Wabash any line of its own across the river?

A. No.

Q. Its own rails?

A. Not its own rails.

Q. Any more than the Missouri Pacific has?

A. No, sir.

Q. Do you know what the cost is of bringing L. C. L. through freight across the river?

A. Yes, five cents a hundred with a minimum of fifteen cents a shipment.

Q. In what way is that brought, how is it hauled, by car or by team?

608 A. It is hauled by wagon from various east side lines to our St. Louis Fourth street station.

Q. Does any of the L. C. L. freight going through to Missouri River points come to your west side station in any other way besides wagons?

A. From connections other than our eastern lines?

Mr. FYFFE: Yes, sir.

A. No sir.

Q. It all comes by wagon?

A. It all comes by wagon, yes.

Q. You mean you do not have any that comes by through car?

A. No, not from other lines.

Q. So on all the through business L. C. L. merchandise that you receive from eastern connections you save five cents a hundred weight for the haul across the river from the eastern connections to your own depot?

A. Yes, sir.

Q. Where do you get the freight that originates locally in St. Louis going from St. Louis to Missouri River points?

A. We receive freight at our Fourth street station and also receive freight through the Tenth street station by the Terminal Railroad Association.

Q. How does the freight come to you at the Fourth Street station which is local freight?

A. It is delivered by the shipper by wagon.

Q. What do you do with it after it gets in there?

A. We truck it from the platform to the proper car.

Q. The cars are set there I suppose?

609 A. The cars are set for certain destinations.

Q. Have you ever made an estimate of what it costs the road to transfer that freight from the teams of the shipper to your cars?

A. Yes, sir.

Q. How much does it come to per ton?

A. It varies from 30 to 32 cents per ton.

Cross-examination.

By Mr. WALTER:

Q. Did you make that exhibit?

A. No, sir, I did not make it.

Q. You do not know of your own personal knowledge whether it is true or not true, do you?

A. I know it is made up from statements that are furnished by the agents.

Q. That is not the question I ask you. Do you know of your own knowledge that it is a truthful statement.

A. I do not know that it is absolutely correct, no.

Q. You do not know that it is anyway near correct do you? of your own knowledge?

A. I know that it is correct insofar that the averages compare with the averages of the merchandise loading in these various points. In other words we get a statement every month from our Auditor's office showing the loading at every station.

Q. Do you remember what it was for any particular month?

A. I can give it to you, I have got it right here.

610 Q. Of your own personal knowledge do you know?

A. No, I cannot remember the loading at some five or six hundred stations of the Wabash Road.

Q. Can you tell me of your own knowledge that the statements therein contained are true?

A. There may be errors in that statement.

Q. There may be errors of omission or commission. You don't know do you?

A. As I said before I do not think the errors can be very great because the average loading at the various stations runs fairly equal. What I mean by that is for instance you take our St. Louis, I know about St. Louis because I do that every month. That is compiled under my direction.

Q. There is a wide variance there in the averages isn't there?

A. Yes, and that always will occur?

Q. That is all you do know that there is a wide divergence in the average?

A. Yes, that is liable to occur on all through traffic.

Q. That statement was prepared and given to you wasn't it?

A. Yes, sir.

Q. To go into this case?

A. It was prepared by a clerk who stated it was correct.

Q. That is all you know isn't it?

A. That is all I know so far as that statement is concerned.

Q. You are not willing to state of your own personal knowl-
611 edge that that is correct, are you?

A. No, but with very little trouble by tomorrow morning I would tell you absolutely whether it is correct or not.

Q. You have not done it have you?

A. No, I have not so far.

Mr. FYFFE: Will you be satisfied with that statement if Mr. Taussig comes and swears that he has compared it?

Mr. WALTER: No.

Q. Isn't it true that the main body of seaboard shipments of the first five classes goes by way of Hannibal, the long haul for your line?

A. No, sir.

Q. The Wabash gets the long haul in hauling from Buffalo its eastern terminus through to Kansas City?

A. Yes, sir.

Q. Isn't it true that that is the direct line when the Wabash handles it?

A. I don't understand what you mean by the direct line. We have got two lines, you understand.

A. The short line going through Hannibal is the least expensive to the Wabash.

Mr. WEBSTER: Whether the Atlantic seaboard business does not go through Hannibal.

The WITNESS: He did not ask that question.

Mr. McHUGH: Well, answer that.

A. I think you will find in the record the answer that it does not.

612 Mr. WALTER: Do you know what per cent of the Atlantic seaboard business of the first five classes goes through Hannibal and what goes through St. Louis?

A. On L. C. L. traffic the bulk of it goes via St. Louis.

Q. How do you know?

A. Because I know from the loading lists and instructions to our eastern agents how to load the freight and I know what we receive here.

Q. Your instructions to your eastern agents are to so load the traffic as to get the haul into Hannibal from points beyond going to Kansas City are they not?

A. No, sir, not at all.

Q. In other words your instructions are to your agents to let your competitors haul it to the Mississippi River?

A. You seem to lose sight of the fact that we have got two lines one via Hannibal and one via St. Louis and we can reach Kansas City via either line.

Q. What is the eastern terminus of the line that goes through St. Louis to Kansas City?

A. Buffalo.

Q. What is the eastern terminus of the line going through Hannibal?

A. Buffalo.

Q. Why should the agent at Buffalo load it to Kansas City via St. Louis instead of going direct through Hannibal?

A. That is done on account of the light tonnage that we would have in cars if we loaded in that manner. We tried that proposition and found that the tonnage of those cars to load direct from 613 seaboard points excepting New York, was so light that we were not warranted in hauling the cars that way, and we ordered it loaded on St. Louis which was a concentrating point.

Q. You haul them light all the way from Buffalo down to Hannibal and from Hannibal to St. Louis in order there to reload them to get them heavier to go on to Kansas City?

A. If you will look at the map you will find that the road does not run in that direction at all. You are wrong in the direction in which this railroad runs. This railroad does not run in any such direction. We have no line from Hannibal to St. Louis.

Q. How do you get your traffic across the river?

A. From East St. Louis to St. Louis.

Q. You haul it to East St. Louis?

A. Yes, sir.

Q. You pay a railroad there to haul it across for you?

A. Yes, sir.

Q. You have additional charges here in St. Louis?

A. What additional charges do you refer to?

Q. Switching charges here in St. Louis?

A. There are no such charges as you refer to.

Q. You say that you have no cars coming across the river at St. Louis, that you get everything by dray, five cents a hundred pounds?

A. No, sir, I never made such a statement.

614 Q. Didn't you answer Mr. Fyffe that you didn't have any cars at all coming across that it all took the five cent charge.

A. I answered Mr. Fyffe's question in that manner.

Q. Is that true or not?

A. It is true.

Q. Then you have no cars which come across the river?

A. We do.

Q. Do you pay five cents on it?

A. No, sir.

Q. Just explain that. I don't understand the two.

A. I thought you did not.

Q. Now I would like to have it explained.

A. Mr. Fyffe's question was on traffic coming from connecting lines other than the Wabash. Your question is solely on Wabash haul. There is a difference between the two. I answered Mr. Fyffe's question correctly and I answered yours correctly.

Q. The other traffic which comes via your line to East St. Louis is handled through in the same car across to St. Louis?

- A. Yes, sir.
- Q. What do you pay for that?
- A. Two cents a hundred pounds.
- Q. That will average about twenty dollars a car?
- A. No.
- Q. I thought you said the average was 10,650 pounds New York to Kansas City.
- 615 A. I don't understand that would make any \$20.
- Q. \$2 a car?
- A. That is different.
- Q. Is that right?
- A. Yes, about \$2.
- Q. Is that all the charge?
- A. That is all the charge that we pay yes.
- Q. What other charge is there whether you pay it or not?
- A. There is some expense in handling the car to the freight house. It is our own expense.
- Q. Do you handle it here in St. Louis?
- A. Yes, sir.
- Q. What does that cost?
- A. It costs in that alone about 16 cents a ton.
- Q. To load it?
- A. To load it up again would be about 8 cents a ton.
- Q. What is the total cost of the transfer?
- A. I don't understand your question transfer.
- Q. What is the total cost of transferring this traffic from the car in which it comes in to the car in which it goes out?
- A. Twenty-four cents.
- Q. Twenty-four cents a car?
- A. Twenty-four cents a ton.
- Q. What is the 30 to 32 cents that you spoke about?
- A. That is the average freight handled over the platform, that is to say the operation of taking the freight from the wagon checking it into the car stowing it and all that sort of thing.
- Q. What would be the total expense including this switching across the river?
- 616 A. According to that it would be 44 cents.
- Q. On the ton
- A. Yes, sir.
- Q. There is no such charge at Hannibal is there?
- A. I don't know about that. There is a bridge toll at Hannibal, what it is I don't know. It is a traffic question.
- Q. There is no trans-shipment at Hannibal?
- A. No, there are no facilities there for that.
- Q. Just as it comes to the east bank it goes to Kansas City.
- A. There are no facilities for that.
- Q. I ask you whether you do do it?
- A. No.
- Q. If a train load of traffic of the first five classes from the seaboard was to come to your line at Buffalo do you mean to say that that train load of cars would come to East St. Louis then to St. Louis and on to Kansas City instead of going through Hannibal?

A. If we have a train load it would certainly go to Hannibal. It does not come in any such quantities and any such tonnage.

Q. Have you got any figures here that will tell us that? How do you know these things?

A. I know from our total loading tonnage records.

Q. Where are your tonnage records?

A. I can produce them.

Q. Can you produce the tonnage loading of your first five classes of seaboard traffic coming through St. Louis and that which
617 goes through Hannibal? You have such figures haven't you?

A. I suppose the Auditor's office may have them. I don't know about those figures. I know the average car loading, we have those figures, the average car loading from seaboard to Missouri River points.

Q. I am talking about the tonnage between those two points St. Louis and Hannibal.

The WITNESS: Let me understand you now.

Mr. WALTER: I want to know what tonnage going to Kansas City goes through St. Louis and what goes through Hannibal, seaboard traffic of the first five classes?

A. I do not know whether any such statement is kept or not.

Q. You never saw any such statement did you?

A. No.

Q. Your testimony here is purely guess work isn't it?

A. No, it is not, not on the question of operation. You have asked me a number of such questions.

Q. You say that the traffic goes through St. Louis. I want to know how you know it, if there are any such tonnage figures in existence

A. I know this, that if our management issues instructions to the eastern agents of which I get a copy showing that they will load this traffic via St. Louis, the L. C. L. for St. Louis in order both to expedite the shipments and to secure full tonnage, I know that those
618 shipments are not going via Hannibal excepting a stray shipment that may be billed by some clerk in error.

Q. Have you got those instructions?

A. Yes, sir.

Q. Can you bring them here?

A. Yes, sir.

Q. Can you have them here in the morning?

A. Yes, sir.

Q. Let that go for the present. Now I want you to tell me what business originates here going to Kansas City and Missouri River points, what proportion of the tonnage to those points originates here?

A. The greater percentage of the traffic that we haul out of St. Louis originates here.

Q. What percentage is it?

A. I would say approximately about 85 per cent of the L. C. L. traffic.

Q. All of these rates of the first four classes are L. C. L. rates aren't they?

A. Yes, sir.

Q. The less than car load rate is made on the basis of handling only a hundred pounds in a shipment or even less isn't it?

A. It means less than car loads.

Q. It may be a hundred pounds?

A. It may be 50 pounds.

Q. Any amount?

A. Yes, sir.

Q. How much of that traffic is handled in car loads from the seaboard.

The WITNESS: You mean merchandise?

Mr. WALTER: Of the first four classes.

The WITNESS: From the seaboard to where?

Mr. WALTER: Kansas City and Missouri River points.

A. I think this statement shows fully.

619 Q. What is that?

A. We have got it here.

Q. Have you any knowledge aside from this statement?

A. No, I have not.

Q. That will do for that. You solicit freight here, the Wabash, for shipments west?

A. Yes, sir, the Traffic Department does.

Q. You have a force which is paid to do that?

A. Yes.

Q. You have property which you use for that purpose, for the gathering in of freight, freight houses and things of that sort, terminal facilities?

A. Yes, sir.

Q. And the terminal facilities of a railroad are the most costly part of its plant are they not?

A. Yes, sir.

Q. Can you give me any idea as to the amount of money expended here solely in soliciting business out of St. Louis to these points, originating here?

A. No, sir, I don't know how many solicitors we have got and how much they are paid.

Q. You do not know that it costs any more to handle this seaboard traffic on a hundred pounds from the time you receive it until you deliver it at Missouri River than on a like amount, a like quantity of traffic originating at St. Louis for the same point?

A. I only answer on the operating end of the proposition.

620 Q. I am speaking now of the total cost to the carrier, every element which goes into the cost.

Mr. FYFFE: You are not limiting it to operating cost?

Mr. WALTER: No, sir.

Q. I have no means of knowing what the total cost is.

Q. You have no means and don't know whether it costs any more to handle the seaboard than the local traffic?

A. Only from an operating standpoint.

Q. I want to know if you know the total cost to the railroad company of the one traffic as compared with the other?

A. I do not know because there would enter into that the President's salary, I don't know what he is getting. The Vice President and a few others. If you want to get that you would have to go back to the pay rolls of the railroad.

Q. Will you bring us these instructions in the morning?

A. Yes, sir.

Mr. WALTER: That is all.

Redirect examination.

By Mr. FYFFE:

Q. I think you stated that on business received from the Wabash eastern line to the Wabash western line the charge for hauling across the bridge in cars is two cents a hundred pounds?

A. Yes, sir.

Q. That is 40 cents a ton?

A. Yes, sir.

621 Q. You stated if that were trans-shipped from the eastern car at your freight house in St. Louis to a west bound car the expense would be 24 cents a ton?

A. Yes, sir.

Q. Then the total cost, operative cost is the combination of these two figures?

A. I made a mistake there of 20 cents.

Q. In other words the total is 64 cents and not 44 or 40 as you stated?

A. Yes.

Recross examination.

By Mr. WALTER:

Q. Does the Wabash railroad pay any switching charges on traffic originating here bound west of the first five classes?

A. Very little. I do not think you can hardly mention it because it is such a small per cent.

Q. There is a tariff covering these switching charges?

A. There is a tariff covering switching charges, yes.

Q. The cost of handling seaboard traffic going to Missouri River cities is identical with the cost of handling traffic originating at the same points going to trans-continental points, going to Montana common points, to Texas common points and Oklahoma common points?

A. I don't know anything about those questions of Texas and Oklahoma. We don't run there.

Q. There is no difference at all made in cost by reason of the destination of the traffic is there, if it originates in the
622 east?

Mr. FYFFE: Do you mean operating cost?

Mr. WALTER: Any cost.

Mr. FYFFE: He says he does not know anything about anything except operating cost.

Mr. WALTER: Let him answer that then.

The WITNESS: I do not know anything about the traffic end of the proposition.

Mr. WALTER:

Q. Is there any difference in the cost of service rendered by your carrier when the traffic originates in seaboard territory and is destined to Missouri River common points than when it originates at the same point and is destined to Pacific Coast terminals to Texas common points Montana common points Oklahoma common points, or any point in the west?

A. You have again got to make a separation there as between the Wabash proper and connecting lines.

Mr. WALTER: From connecting lines.

A. No, sir.

Q. Then when the Wabash itself handles it from the one point in the east to the Missouri River in the west it is the same and no different than when it goes to all these other points when it is brought in to St. Louis by the Wabash?

The WITNESS: Missouri River points and any other points
623 you mean?

Mr. WALTER: Yes.

The WITNESS: Brought in through cars?

Mr. WALTER: Yes.

The WITNESS: No, the cost is the same.

Re-examination.

By Mr. FYFFE:

Q. You stated that you were only acquainted with the operating cost?

A. Yes.

Q. As to the other cost outside of operation, salaries, pay rolls and all the rest of it, is there any difference in the burden of those with reference to through business and local business so far as you know?

A. On the through traffic the method of operation there is more expensive than it is on the traffic that is received locally.

Recross-examination.

By Mr. WALTER:

Q. You know this is the fact do you not that the local soliciting of freight here is highly competitive? That there is a trained force of men and much money spent solely to get that business?

A. That applies to all points, from all points to all points.

Q. Do you have the same men in Cincinnati soliciting
624 freight as you have here?

A. No, but those people will solicit business from Cincinnati to St. Louis and from St. Louis to New York.

Q. You say that 85 per cent of the freight handled out of St. Louis originates here?

A. Yes, sir.

Q. Is it not true that your soliciting department and the property used to get that business and your terminals used solely for that business are far more expensive and cost more to the carrier to maintain on that business than one the business is simply passing through?

A. Well, the business through will pass through the terminal.

Q. But the cost of getting the business in St. Louis is much greater than it is to get the business at East St. Louis and carry it on?

A. As I said before my experience is simply in operating.

Q. You don't know those things do you?

A. What I do know is this that at outlying points we have traveling freight agents that we have for that purpose. We have men all over the United States.

Q. They travel over a large territory?

A. They have men under them that do the same thing. My understanding of the method of solicitation is that it is the same at a terminal point and at an intermediate point.

Q. Isn't it true that when you say it costs more to handle the through freight than it does local freight you are just guessing at it?

A. No, I am not guessing at anything.

Q. You don't know do you?

A. I know what it costs to handle freight most assuredly because I am handling it. I have direct charge of handling freight in St. Louis. I have done nothing else for about ten years than handle terminal freight.

Q. When you say that it costs more per ton to handle this seaboard traffic here at St. Louis than it does the local traffic you are guessing at it, you don't know?

A. You have got two propositions in there. I say that it costs more to handle—I will make it clear to you. The consignee delivers to a platform and you truck across 25 feet of platform into a car. On through freight the through freight car is bound to not only contain freight for transfer but also freight for direct delivery at St. Louis and therefore you have got to separate the St. Louis freight from the through freight and truck it around from what is known as independent house to an outbound freight house and there load it into the proper car. It stands to reason that the operation of trucking solely across the platform into a car and the operation of unloading the car on the platform and rehandling it into another car is different.

Q. You don't know what the total cost is do you of handling local traffic?

A. Yes sir, I do.

626 Q. Total cost to the carrier of handling local traffic?

A. I am talking of operation.

Q. That is only one element isn't it?

A. That is all I have testified to.

Q. When you say it costs more, taking into consideration all cost you don't know do you?

A. I am talking of operation. I have said that right along.

Q. You don't want to be understood as saying that the total cost to the railroad company is greater on through traffic than on local traffic?

A. I have already testified to that.

Q. I want to answer so that we won't misunderstand.

A. I have already testified to the fact that I am only here to answer questions of operation. I don't know what you might take in as total costs.

Q. Let me ask you this: You don't know whether the total cost to your carrier is greater on seaboard traffic passing through St. Louis than on a like amount of traffic originating in St. Louis and going to the west?

Mr. FYFFE: Objected to unless that question carries with it the further statement to the witness that the reference is to total cost including all cost besides operation.

Mr. WALTER: All cost includes operation and every other cost.

What do you say to that question.

627 A. I am not prepared to answer that question.

Q. You don't know do you?

A. I say I am not prepared to answer.

Q. Then you don't know?

A. I don't know right now.

Adjourned to ten o'clock tomorrow morning.

628 On February 4th, 1909, at ten o'clock, A. M. the parties met pursuant to adjournment.

Present as before.

GEORGE W. SIMMONS, a witness produced, sworn, and examined on behalf of the complainants, deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. What is your name?

A. George W. Simmons.

Q. Where do you reside?

A. St. Louis.

Q. How long have you resided there?

A. All my life.

Q. Are you in business in St. Louis?

A. I am.

Q. Identified with what business house?

A. Simmons Hardware Company.

Q. In what capacity?

A. Vice president.

Q. How long have you been giving your time to the business of the Simmons Hardware Company?

A. About nine years.

Q. How extensive business in a general way does the Simmons Hardware Company do?

A. We do business to a considerable extent in every part of the country and to a more or less extent in every country in the world.

Q. What line of business is carried on by the Simmons Hardware Company?

629 A. We sell general merchandise, more particularly hardware, cutlery, sporting goods and stove goods and kindred lines.

Q. Do you do any manufacturing of specialties?

A. We manufacture a few lines ourselves, and control the manufacture of a good many others which we do not actually own the factories but we take their out-put and to that extent control them the same as if it was our capital invested.

Q. Are you familiar with the commercial conditions of the middle west of this country?

A. I am.

Q. And familiar with the freight conditions of this country so far as they affect the middle west, and St. Louis in particular?

A. Yes.

Q. The Simmons Hardware Company has its office and headquarters and does its business here in St. Louis?

A. Yes, sir.

Q. You may state where your competition is in your business?

A. Our competition is everywhere we go. In other words we compete in every territory with the merchants the jobbers and manufacturers who are located in this territory as well as those other large centers which extend out largely into all parts of the country as we do.

Q. You have competition in the seaboard territory?

A. We have.

630 Q. Even where the seaboard territory may not have men out and doing soliciting work west of the Missouri River they do compete in selling to the jobbers of the Missouri River who distribute?

A. They do both direct and through the jobbers.

Q. Now you may state whether the rate adjustment by which the railroads transport from the Mississippi River to the Missouri class rate articles for you at the same rate they do for the seaboard shipper has had an effect upon your business and its development?

A. It has.

Q. State whether or not that was an essential to the development of your business?

A. I believe it has been.

Q. And that is true of the business houses generally here in the city of St. Louis?

A. I believe so.

Q. Now you may state what effect upon commercial conditions here would result from the enforcement of the Commission's order in this case to compel the railroads to transport between the Missis-

issippi and the Missouri Rivers all articles taking class rates at a lower rate when the shipment originates at the Atlantic seaboard than the rate charged generally?

A. I believe it would be distinctly detrimental to the business interests of the firm with which I am associated and also others doing business in St. Louis if our competition could land their goods at the Missouri River points at a less rate than we could.

631 Q. You think that would be serious?

A. I do.

Q. You think it would affect the status and the development of the business in this city?

A. I think it would decidedly affect the status.

Q. Do you think it would have a deterrent effect upon the development of business here?

A. I think it would.

Cross-examination.

By Mr. WALTER:

Q. How old are you?

A. Thirty-one.

Q. The Simmons Hardware Company sells its products in the east doesn't it?

A. It does.

Q. And pays the freight right into the seaboard territory from here?

A. No, sir.

Q. Who pays that rate?

A. Some of the goods that we sell in the east do not come to St. Louis at all.

Q. You do ship goods from here right into the seaboard territory and compete with hardware people right there do you not?

The WITNESS: Just what do you mean by seaboard territory?

Mr. WALTER: Points in the territory east of a line drawn from Suspension Bridge to Pittsburg down to the Potomac river.

The WITNESS: I am trying to figure on where your north and south line comes.

632 Mr. WALTER: The north and south line comes from Buffalo to Pittsburg.

The WITNESS: The other line.

Mr. WALTER: The east and west line is the Potomac River.

A. We ship practically nothing from St. Louis into that territory.

Q. Do you ship to any points beyond, Maine and New England states?

A. From St. Louis, no.

Q. Do you ship to Europe through that territory?

A. To a very little extent, practically none at all.

Q. Where do you ship from?

A. New York City.

Q. You have a great deal of your stuff there?

A. We have a line of our specialties only.

Q. What class do these goods largely take?

A. I should say first, second and third with the average business second class.

Q. How long ago did you have to deal with rate matters?

A. I am dealing with them most of the time.

Q. Are you the traffic man of your company?

A. I have charge of the traffic, yes.

Q. How long have you been the traffic man?

A. Four years and more, between four and five years.

Q. You compete with seaboard manufacturers in Central Freight Association territory do you not?

A. We do.

Q. Are able to do business at a profit?

633 The WITNESS: By central do you mean west of Buffalo?

Mr. WALTER: Yes.

A. Yes.

Q. What is the reduction made by the Commission's order on first class?

A. Nine cents if I remember correctly.

Q. On the second?

A. I cannot tell you off-hand.

Q. On the third?

A. Nor that.

Q. The fourth?

A. Nor that.

Q. The fifth?

A. Nor that.

Q. So that you do not know what the effect of the Commission's order is going to be except on first class?

A. I do. I do not happen to recall the figures off-hand although I have studied the thing with those figures in mind.

Q. It is largely an estimate of yours isn't it?

A. Not at all.

Q. Do you think it will have a deterrent effect on your business if this reduction is made?

A. I do.

Q. What is the average profit to you on the hundred pounds of your first class?

A. I never had it figured on in that way.

Q. On the ton business?

A. I haven't any tonnage figures.

Q. What is the value of a hundred pounds of your goods?

A. The goods vary so much it is hard to tell. It is approximately seven cents but that is only approximate.

634 Q. Do you mean to say that the average value of the articles you sell of first class is only seven cents per hundred?

A. Not of first class. Everything we sell. I have never figured it in any other way. That is only approximate. We have about 80,000 different articles and it is a physical impossibility to figure the average of everything.

Q. So you do not know what the value of first class articles is by the hundred pounds?

A. I do not.

Q. Do you know your profit on a hundred pounds?

A. No.

Q. You don't know what proportion of the profit this reduction in freight rate might be?

A. No.

Q. The only effect which this reduction would have would be a slight lessening in the profit you otherwise would have?

A. It would mean that it would take from our net profits the amount of the reduction.

Q. You don't know how much that is?

A. In percentage, no.

Q. You do a very profitable business do you not?

A. Moderately so.

Q. You know that the rate into St. Louis plus the rate out of St. Louis, for example to points in Nebraska, is less than the rate into the Missouri River cities, Omaha for example plus their rate out to those points?

635 A. I believe it is.

Q. So that you have an advantage under the rate adjustment to points immediately tributary to and west of Omaha?

The WITNESS: Advantage over whom?

Mr. WALTER: Over the Omaha jobber.

A. Possibly I did not understand your first question.

Q. I will repeat. You know that the rate into St. Louis plus your rate on the same traffic to points in Nebraska, Lincoln, for example, is less than the rate into Omaha, plus the rate from Omaha out to Lincoln on this same identical traffic?

A. I believe that is a fact.

Q. That is generally true of a large territory extending practically 200 miles west of the Missouri River cities?

A. That I believe is a question of fact. I am not sufficiently conversant with the facts to know. That is a question of fact not of opinion.

Q. That is your understanding of the existing situation?

A. I understand there is such a situation, just where it exists I do not pretend to say.

Q. Wherever that does exist it gives you an advantage over the Omaha jobber and the other Missouri River jobbers, that is true isn't it?

A. Presumably, yes.

Q. You do not want anybody to pay more than what is a just and reasonable rate for their transportation do you?

636 A. No.

Q. If it be true that the rate from seaboard territory on these first five classes of traffic for many years has been an unjust and an unreasonable rate, to the extent we will say on first class of nine cents, do you say that the fact that you have competed with

them on that basis of an unreasonable rate is any reason why those people should be denied a just and reasonable rate?

A. No sir, nor do I admit that the rate has been unreasonable or unjust.

Q. But if it has been?

A. There is no question if it be so. You can of course take any assumption you want in order to reach a conclusion. Base your assumptions on fact before you go to your conclusions.

Q. You believe that you can do business and compete with other persons engaged in the same business on the relative basis of each of you paying a just and reasonable rate and no more than that?

A. If the rate is just and reasonable for all concerned undoubtedly.

Q. Can you give me the amount of your business per year?

The WITNESS: In dollars and cents?

Mr. WALTER: Yes.

The WITNESS: Business which does not come to St. Louis?

Mr. WALTER: No, your total business.

637 The WITNESS: Does the business which is not in any way affected by this question have anything to do with it?

Mr. WALTER: I am speaking of your total business the world over?

A. Possibly twenty millions.

Q. How much of the twenty millions if you know is affected by this reduction in rates?

A. It is impossible to tell you.

Q. It is only a small proportion isn't it?

A. No, it is a considerable proportion. The majority of our business lies west of the Mississippi River.

Q. Where are your competitors located?

A. Everywhere.

Q. You have competitors in the immediate territory where you sell the country over, the world over for example?

A. Yes, sir.

Q. You are able to do business in competition with them at their very doors?

A. At a greater or less profit yes. In some cases at no profit.

Q. You do not do business at no profit?

A. We do a good deal.

Q. At no profit?

A. Yes.

Q. You are a corporation?

A. Yes, sir.

Q. Is that the general policy of the corporation?

A. Yes, sir.

Q. Why do you do business at no profit?

638 A. On account of certain circumstances which influence other business. It is entirely a commercial question the same as any other concern in the country does.

Q. So that if you do not make any profit on the direct traffic you do indirectly on other articles affected by the traffic upon which

you make no profit make enough profit to afford to sell all your traffic—

A. Not necessarily no.

Q. But I understand you to say that you sell certain articles—

A. I am trying to be technically correct here under my oath. There are cases where we sell an article without profit where some peculiar circumstances makes that necessary in order to influence it. If some man has a peculiar hobby, if he wants to buy galvanized tubs and he thinks that he can buy galvanized tubs better than any other man in the country we sell him galvanized tubs at a loss if necessary to sell him the rest of his bill of goods.

Q. So that on the whole bill you do make a profit?

A. Yes, sir. We are not in business for our health and do not expect to conduct business at a loss.

Q. If this rate reduction as decreed by the Commission should go into effect would you supply your customers in the trans-Missouri territory, or we will say the Missouri River territory reaching out each side, from St. Louis or from the houses in New York?

639 A. From St. Louis. In New York we have a very small house and handle only a few specialties.

Q. Take the specialties—

A. They cannot be separated from the general business.

Q. If you found you could ship them cheaper from New York to Lincoln, for example under the proposed reduction than from St. Louis, which would you use?

A. We would use St. Louis. We could not ship into that country in the quantities in which we ship—

Q. Isn't it true that if the proposed reduction goes into effect you will still do business at the same old stand and in the same territory that you now do business?

A. Yes, and at a less profit.

Q. That is all that there is in it isn't it, it is a question of profit to you?

A. Presumably, and it will also undoubtedly decrease the volume of our business. It would seem to me natural that it should.

Q. The prime reason, the controlling reason of your objection to the rate is that it will lessen your profit?

A. Lessen our profit and the volume of our business.

Q. Tell me if you can what reduction in the volume of your business will occur?

A. I cannot tell you accurately.

Q. You don't know that there will be any whatever?

640 A. I don't know it no nor does any one else. We cannot predict the future.

Q. It is mere conjecture isn't it?

A. Just as any idea of the future is conjecture.

Cross-examination.

By Mr. Atwood:

Q. Assuming that your profits were not substantially reduced, just take an arbitrary illustration: supposing the profit were 30 per

cent and the reduction was 2 per cent, that would not diminish the business in that particular place, you would continue to do business at 28 per cent rather than forfeit the business?

A. If it did not get it down below the belt. Our general business is at approximately 3 per cent net. There is not much left.

Q. How much would the establishment of the proposed rates diminish the profits on the Nebraska Kansas business?

A. I cannot give you that separately.

Q. If you do not know how much it is how can you say it will curtail the sales of goods in that territory?

A. Simply that I cannot give you under oath a statement which would require a week to tabulate.

Q. It simply diminishes the value of your testimony, that is all?

A. All right, if that is the way you figure on it. It is
641 satisfactory to me.

Q. I don't think there would be any chance to figure it any other way?

A. (No answer.)

Q. Have you any competitors that you compete with in the territory west of us who have their headquarters in Cincinnati, Toledo, Indianapolis or Pittsburg?

A. There are undoubtedly manufacturers in those cities where we have competition, yes.

Q. That is they having their places of business in these cities that I have named and who enter this Kansas, Nebraska, Oklahoma Trans-Missouri River territory as competitors of yours?

A. To some extent yes, but not largely, with the possible exception of Pittsburg on iron and steel articles, and these are indirect competitors, in that they are manufacturers who sell to our competitors on the Missouri river just as we buy from them.

Q. Do you know what the comparative rate conditions are between you and them on Missouri River stuff, whether they or you are at an advantage?

A. I consider that there is no advantage one way or the other under the present arrangement.

Q. Do you know what the rate is from Pittsburg to St. Louis, St. Louis to Missouri River?

A. No, sir, not off-hand.

Q. Do you mean by that without data before you you would not be able to state?

642 A. Yes, sir. I do not attempt to keep these things in my head because I think it is better when I have use for them to get them right.

Q. Then if I understood you you take for instance a Pittsburg house your competitor, the objective point, the point of competition we will say Oklahoma City, do you know whether you are at an in and out advantage over Pittsburg or whether Pittsburg is at an advantage over you in the territory just named?

A. In the general run of our business there are no jobbers in Pittsburg who go out into that country. It is purely an article

manufactured there which is bought by us and also bought by the other jobber.

Q. There are hardware houses, wholesale houses in Oklahoma City are there not?

A. I think there is one and may be two so-called jobbers. There is one which is a branch of a Kansas City house.

Q. Do you know whether they buy in Pittsburg or not?

A. I don't know positively but I am quite sure they do.

Q. Do you know when that purchase is made after the goods are received whether you or they from the standpoint of rate expense are at an advantage one over the other in that market?

The WITNESS: You are now referring to Oklahoma market?

Mr. ATWOOD: Yes, using that as an illustration.

A. My impression is that the rates are the same through 643 St. Louis as direct.

Q. Do you have any serious difficulty in meeting competition in Oklahoma cities such as to eliminate you as a competing factor in the hardware business?

A. We are not eliminated but we do find competition there of the Missouri River houses.

Q. You find it everywhere don't you?

A. Yes.

Q. You would not expect the rates to be adjusted on such lines as would eliminate all competition?

A. Not at all.

Q. You recognize the right of other people to do a little selling?

A. Yes.

Q. You do compete and compete successfully in Oklahoma City?

A. Yes.

Q. You say you think it is done on a substantial freight parity out of Pittsburg?

A. Yes, on Pittsburg business.

Q. Would it astonish you at all to know that you were at a disadvantage of 6½ cents on every hundred pounds of first class stuff?

A. Not the slightest.

Q. A little difference like that don't cut very much ice with Simmons Hardware Company?

A. Yes, it does, but you are talking of Pittsburg now and the extent of our line is such that you cannot locate the point of origin at any one place such as Pittsburg.

Q. You do sell some things that are manufactured in Pittsburg?

A. We do.

644 Q. The like of which and the competing articles of which are manufactured in Pittsburg?

A. Yes.

Q. As you say you apprehend the fact to be that this Oklahoma house purchases in considerable quantities from Pittsburg?

A. Yes.

Q. That has to be met by you in competition?

A. Yes.

Q. You say that the difference if it is a difference of freight cost of 6½ cents does not curtail your business?

A. I did not say it did not curtail the business. I said we were able to get some business on that basis.

Q. Of course if you could eliminate all competition your business would extend beyond the bounds that it now has?

A. Probably.

Q. Do you recognize the freight condition to be an element that you feel that you could complain of in Oklahoma?

A. I cannot say that we can complain of it, no.

Q. Have you any competitors in Cincinnati?

The WITNESS: In what territory?

Mr. ATWOOD: Who reach this territory. I speak of Oklahoma.

A. I do not know of any.

Q. Or Indianapolis?

A. I do not know of any there.

Q. How do your shipments to the Texas common points
645 route?

The WITNESS: From where?

Mr. ATWOOD: Here, from St. Louis?

The WITNESS: I do not understand your question.

Mr. ATWOOD: How do they go, what railroads?

A. They go on several different railroads that run from here to those points, the Iron Mountain, M. K. & T. and Frisco.

Q. Do they go west from St. Louis?

A. They go both ways.

Q. Do you have competitors in that country that come from
Pittsburg?

A. Goods which originate in Pittsburg are sold in Texas common points.

Q. I presume your answer would be the same as to the rate in that territory as between you and Pittsburg?

A. Just at present we are paying about four times the rate they are I believe. It is due to unusual competition. That would eventually put us out of business.

Q. When was the rate four times as great established, I mean comparison between St. Louis and Texas common points on the one hand and Pittsburg and Texas common points on the other?

A. I cannot give you just the date. It is on water competition.

Q. Is it recent?

A. Comparatively recent.

Q. When you say recent do you mean within a few months
646 or a few years?

A. I mean within a few months.

Q. When was the change if any that took place on the Atlantic seaboard East St. Louis St. Louis rate which resulted in St. Louis getting the same as the East St. Louis rate, in other words that the bridge charges were absorbed?

A. To my recollection it was a little over a year ago.

Q. That bettered your rate something like five cents on in from the Atlantic seaboard first class?

A. I think not.

Q. How much did it better you?

A. About a cent.

Q. Did you take your own stuff prior to the change in rate to which we have just adverted to East St. Louis and do your own draying to your warehouses in St. Louis proper?

A. Some of it, not much of it, most of it came through.

Q. Prior to that time it came through to your warehouse the same as it does now and you say the change in the rate has only bettered your situation first class one cent approximately on a hundred pounds?

A. Something of that sort.

Q. Do you know whether your competitors were affected one way or the other by that, was there any change in their rate so as to be bettered a cent, I mean on the Missouri River so as to be bettered a cent as you were?

A. I don't know of any.

Q. How are the Missouri River rates made up through from 647 the Atlantic seaboard?

A. Based on the rate from the seaboard to the Mississippi River plus the Mississippi and Missouri rate.

Q. That adds a cent to the Missouri River rate and did add a cent?

A. I think not because if I remember rightly the Missouri River rate was based on the East St. Louis rate.

Q. What was prior to that change the Atlantic seaboard East St. Louis rate first class we are talking about, wasn't it 87 cents and isn't there a cent added, making 88 cents plus the locals, so that it is 6 cents more than it used to be?

A. I guess that is a fact. I do not pretend to be a rate expert.

Q. You are here as the rate representative of your house.

A. I am here as the representative of the house from a business standpoint. I have people who are rate experts and I do not attempt to keep these things in my head.

Q. Did I misunderstand you when I did understand you as saying that you gave special attention to rate matters?

A. I said that the traffic department was under my jurisdiction.

Q. That is you are the head of the traffic department?

A. The traffic department reports to me, yes, sir.

Q. In that department as you systematize your business is the matter of freight rates part of the matters that fall under 648 your jurisdiction?

A. Yes.

Q. You are the head of that department that has to do with freight rates?

A. I am.

Q. Yet you claim to be no expert?

A. I claim that I do not attempt to carry these things in my head.

Q. But you do know what the first class rate is to your competitors on the Missouri River don't you?

A. Yes.

Q. You knew it before I told you didn't you?

A. Yes.

Q. You knew it was a cent more than it was a year or so ago didn't you?

A. Yes.

Q. Why didn't you tell me so?

A. I didn't stop to figure it out.

Examination by Mr. BELL:

Q. You say that the granting of this reduction to the Missouri River will have the effect of decreasing your business west of the Missouri River?

A. I believe it will.

Q. Then the reverse would be true that if the Missouri rate was advanced and your own was reduced it would have the effect of increasing your business west of the Missouri River would it not?

A. Probably.

Q. Has it done that since a year ago?

A. Probably.

649 Q. Do you know whether it has or not?

A. No.

Q. Yet you know that the Missouri River man has been at a disadvantage of two cents as compared with St. Louis, from the Atlantic seaboard?

A. That is a question of fact.

Q. You don't know what effect it has had on your business?

A. No.

Redirect examination.

By Mr. McHUGH:

Q. The injurious effect on your business of the enforcement of this order would not be limited by the mere competition at the Missouri River and the business done there?

A. Not at all.

Q. It would be extended through the west?

A. Yes, sir.

Q. Because the Missouri River men would get their goods in at a lower rate and that would be reflected in the business all through the west?

A. Yes.

Recross-examination.

By Mr. WALTER:

Q. How far would it affect you to the west?

A. Colorado and Utah points.

Q. You do business there in competition with Missouri River points now?

A. Yes.

Q. Though instead of Lincoln being the limit it goes as far west as Salt Lake City?

A. Probably.

650 ROBERT H. WHITELAW, a witness produced, sworn and examined on behalf of the complainants deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. What is your full name?

A. Robert H. Whitelaw.

Q. Where do you reside?

A. In St. Louis?

Q. How long have you resided in St. Louis?

A. Forty-three years.

Q. Are you in business in St. Louis?

A. Yes, sir.

Q. What line of business?

A. In Jobbers and Commission merchants and heavy chemicals the partnership is Whitelaw Brothers.

Q. How long have you been engaged in that business in St. Louis?

A. Practically forty-three years.

Q. You have seen the growth and development of that business?

A. Yes, sir.

Q. Where are your principal competitors located?

A. All over the eastern territory.

Q. In what is called the seaboard territory?

A. Seaboard territory largely outside of Chicago. Chicago is a competitor of ours.

Q. But you have heavy competitors in the seaboard territory?

A. Yes, the majority of the merchandise that naturally comes from the seaboard territory to the west.

651 Q. Your business has grown in competition with those merchants in the seaboard territory?

A. We have been able to maintain ourselves in the present condition. We have not a large business.

Q. You know the present relation of rates that exist and has existed?

A. Yes, I think I am fairly familiar with them as a merchant.

Q. The adjustment of rates by which you can ship to the Missouri River on the same basis that railroads haul your competitors' like goods between the rivers enters into the development of your business?

A. Yes, sir.

Q. And has been an important factor essential to the development of your business?

A. It certainly has.

Q. Not only your business but business generally in the city of St. Louis?

A. Applicable to all Merchants in St. Louis.

Q. And to all business?

A. Yes, sir.

Q. State what the effect would be on your business and commercial interests generally here in St. Louis if the Commission's

order in controversy in this case should go into effect and the railroads should be compelled to carry goods between the Mississippi and Missouri Rivers at a less rate for shippers in seaboard territory than are charged you for the transportation of an equal amount of like freight between those points?

652 A. Any reduction in the through rate from the seaboard territory to Missouri River common points, either class rates or commodity rates would be very disastrous to the commercial interests of this city in my judgment.

Q. Why and how?

A. I am speaking only from my own line of business. We are not much interested in the first two classes. Our goods are largely staple and are included in third and fourth and commodity rates. Of course I understand that there is no change contemplated in commodity rates, but if you will pardon me I must say that in my statement because I want to show you if I can how staple our line of business is. For instance the Missouri River jobber is amply protected in his rate as a distributing point in the large difference between class rates and commodity rates. Some articles in my line of business today, I could mention them if you want them, the car commodity from Mississippi to Missouri River points is 12 cents a hundred. There on business which is distributed to the Missouri River in car load lots from seaboard territory is at the outset 15 cents for me to overcome if I want to distribute any merchandise west of the Missouri River in less than cars. Now you attempt to add to that two or three or five or seven or nine cents a hundred and where will we be in St. Louis, Chicago, or any other

653 point of this middle territory in attempting to distribute any merchandise west of the Missouri River. That is the main point in my business and I want to say to you that two cents a hundred in a lot of merchandise that I handle is my profit and I do not always get it. It is merchandise in volume very great but in money value small. The bulk of the material we handle perhaps does not exceed \$15 or \$18 a ton at St. Louis. Two cents a hundred or five cents a hundred or three cents a hundred is double what we make on that business.

Cross-examination.

By Mr. WALTER:

Q. What is the amount of your business annually?

A. We do quite a little commission business as well as jobbers. We are not manufacturers. We have a small jobbing business. In addition to that we have a commission business that we handle for manufacturers where the merchandise does not come directly to St. Louis but moves from the seaboard territory perhaps direct to distributing points west.

Q. That would all take this reduced rate wouldn't it?

A. At some points it would, not all.

Q. To the Missouri River points it would?

654 A. If located east of Buffalo. There is a large portion of it that is not, there is a large portion of it located at Detroit that moves from Detroit.

Q. What is the total volume of your business transacted at St. Louis?

A. In dollars and cents approximately a half a million dollars annually.

Q. You sell all over the west?

A. Our territory is confined to the eastern boundary of Illinois a little in Indiana and extends practically to the Rocky Mountains. Some business in Utah and north and south from Minnesota to the Gulf. We are not confined to that territory. We do not distribute east much of anything and not much west of the Rocky Mountains.

Q. Is that territory fixed for you by an agreement with other chemical houses or associations and trusts of any sort?

A. As far as we know we do not represent a trust.

Q. I am asking you if you are limited by any agreement express or understood whereby you will not do business outside of that territory?

A. We are supposed in one or two lines of business that we represent to confine ourselves to certain territory.

Q. In other words the reason you do not do business outside of that territory is because you have agreed not to do it?

A. No, sir. It would not be possible for us to do it as jobbers.

Q. It is true that there is an agreement that you are not
655 to do it?

A. No, sir I should not want to answer that directly in that way. I know nothing about any agreements of manufacturers at all.

Q. Is it not true that the reason you do not go outside of this territory is that there is an understanding in certain commodities you handle that you are not to do business outside of that territory?

A. Insofar as it would be practical to do the business from St. Louis.

Q. I am asking you whether or not there is such an agreement or understanding?

A. Not to my knowledge; no, sir. I merely have certain business arrangements which are applicable to certain territory. Beyond that I know nothing about it.

Q. In other words the business arrangement is that you won't do business outside of the territory you have named?

A. I have no such agreement.

Q. Didn't you say that there was a business arrangement?

A. There may be.

Q. Do you know whether there is or not?

A. I am confining myself if you please to my own business. As to what manufacturers are doing outside of my legitimate territory I have no knowledge.

Q. Your legitimate territory is fixed by business agreement isn't it?

A. No, sir, my territory is fixed by business conditions. I
656 have told you where it was possible for me to do business.

I handle a large line of business that I can sell in any state in the Union if I could do so profitably.

Q. Isn't it true that there is part of your business where sale by you is limited to the territory you have named?

A. I think that is true.

Q. And that is a business arrangement?

A. Not with me it is not.

Q. But you understand and you abide by that agreement?

Mr. McHUGH: That is objected to as incompetent, irrelevant and immaterial and not proper cross examination.

The WITNESS: I do not understand the question.

Mr. WALTER: I will put it to you again. Isn't it true that on a part of your business at least you have agreed either expressly or impliedly and keep that agreement not to do business outside of the territory you have named?

A. In certain lines, yes, sir.

Q. Your competitors are located where?

A. All over the country, all over the west, in the east and west.

Q. You sell all over the territory in the west?

A. The territory I have described, yes, sir.

Q. Which extends from the Lakes to the Gulf, that is from the Canadian boundary to the Gulf?

A. Within certain limits west of the Mississippi River.

657 Q. West of the Mississippi as far as the Pacific coast?

A. Not much beyond Utah. We have some Montana business and a little California business. It is not large in volume.

Q. You do business in Texas Common points?

A. Yes, sir.

Q. And Oklahoma common points?

A. Yes, sir, such as we can.

Q. Do you know whether the rates which break on St. Louis plus your rates out give you any advantage or whether they are the same as your competitors from eastern points through St. Louis to these points of destination?

A. The articles that we handle in Oklahoma and Texas common points, as far as I can remember are not produced in the middle west. We move merchandise from seaboard territory in car loads to Texas common points by Gulf lines.

Q. That that comes to St. Louis and breaks here you ship out from St. Louis to these points?

A. In broken lots, yes.

Q. You compete there with the Chicago man or the Detroit man or the Cleveland man or the Pittsburg man?

A. We do not have any competition from Cleveland or Pittsburg or Cincinnati.

Q. Indianapolis?

A. Nor Indianapolis. We do in Chicago, and possibly in Cleveland.

Q. You are able to do business down there at a profit?

658 A. A certain volume of business. Not altogether satisfactory to us. We get what we can.

Q. Your business on the whole is fairly profitable?

A. It is a very close business and we are fighting for what we get all the time.

Q. It is fairly profitable isn't it?

A. As business goes possibly so for a business of that volume. Our volume is small.

Q. You speak of some of your business being commodity?

A. Yes, sir.

Q. How much of your business is carried on commodity rates?

A. Probably one half.

Q. The balance is carried on what rates?

A. Third and fourth class largely.

Q. You say that the rate on commodity between the two rivers is how much?

A. For instance we will take soda ash which is an important item with us, caustic soda and silicate of soda, those articles carry a commodity from St. Louis to Missouri River common points of 12 cents a hundred. They are all fourth class. Those articles I have mentioned are 27 cents a hundred from St. Louis.

Q. Isn't it true that the commodity rate has recently been very materially advanced?

A. Not on those articles, no, sir.

Q. It is proposed to be advanced, isn't it?

659 No, sir, there is no change considered at all in these commodities I have reference to. Last year the rate was ten cents. It has been changed this year to 12, about two months ago and there is still a difference of 15 cents on fourth class.

Q. Do you consider that a fair difference?

A. No, sir, I consider it a very excessive difference.

Q. Have you spoken to the railroads about it? A. In times past?

A. Yes, sir.

Q. Did they give you any relief?

A. No, sir.

Q. Have you complained to any commission or rate making authority that has jurisdiction of the matter?

A. I am not a kicker and I have filed no formal complaint. I have talked with my railroad friends which is my way of adjusting such matters.

Q. You did not get any adjustment?

A. No, sir.

Q. You feel that you are very greatly damaged by the relation between the class rates and the commodity rates on this traffic between the rivers?

A. I consider that St. Louis and Chicago as distributing centers are grossly discriminated against by the large excess between class rates and commodity rates.

Q. Yet you have made no complaint to anybody about it?

A. Yes, sir. I have made personal complaints.

660 Q. Have you begun any action to secure what you regard as your legal rights?

A. St. Louis has many times taken such action.

Q. I am asking you whether you have?

A. Only as I have plead with railroad friends.

Q. You have not brought any action in any place, before any tribunal to secure what you regard as your rights?

A. No, sir.

Q. And to secure you from paying what you regard as unreasonable rates?

A. No, sir.

Q. It is true that so far as your territory is not circumscribed by the business agreement you compete with the eastern men engaged in the same business with the Chicago men in the same business and Cleveland men in the same business and men in other competing points all over the territory you have described?

A. We do as far as possible. We lose a great deal of business. We get some business.

Q. I suppose every man that has a competitor loses some business?

A. Sure. No one firm can do it all.

Q. Is the most of the matters you handle fertilizers?

A. No, sir we do not do much in fertilizers.

Q. What is the use of the articles you handle?

A. They are used largely by soap manufacturers, by packing houses, and soda ash is largely used west of the Missouri river in the treatment of water. It is used as a softener and to remove alkali from the water. Another article, calcium chloride is largely
661 used by ice plants in the manufacture of ice.

Q. If your competitor has been paying for ten or fifteen years an unreasonable rate and you have been paying only a reasonable rate let us assume, is that any reason why his rate should be maintained at an unreasonable figure?

A. I shall have to ask you to change your question. You are putting a hypothetical question here. Now as a merchant let me make it clear my position, and if I have not answered your question you can ask me another. As a merchant doing business in the city of St. Louis I am not asking any advantage over any other community. I have some warm business friends on the Missouri River and were I in business on the Missouri River I should be advocating the Burnham, Hanna, Munger end of the case probably, but I am doing business in the city of St. Louis. The effect of this rate adjustment on St. Louis would be very disastrous. Missouri River jobbers are a very bright lot of men. They do not need any guardian. They are looking out for their end. They are trying in this case to get an unfair and an unjust advantage over the middle territory, the distributing territory and I am entering my protest against it because it is unfair and unjust.

Q. That is your opinion only isn't it?

A. That is my opinion. I cannot state anybody's else's
662 opinion but my own.

Q. Suppose the Missouri River jobber who competes with you has been paying an unreasonable rate during fifteen years we will say for example, is that any reason why his rate should be maintained when you have all the time been paying only a reasonable rate?

A. I will answer that by saying positively that I know he has not been paying an unreasonable rate.

Q. If he has.

Mr. McHUGH: Assume that he has.

A. I would want the Missouri River jobber to have just the same as I would have myself.

Mr. WALTER: You would want him to pay only a reasonable rate.

A. Yes, sir, and I am not afraid of his paying an unreasonable one either.

Q. You are aware of the fact, that a tribunal charged with the duty under the law of finding a reasonable rate has reduced his rate, are you not?

A. Yes, sir, and I am very much surprised at it. I think the Federal Court will change that.

Q. That is simply because you are an interested party that you say that isn't it?

A. No, sir. I think there is an injustice in that ruling of the Interstate Commerce Commission. I think I have a right to say
663 that in all courtesy and respect. I think a great deal of the Interstate Commerce Commission and its work, but I think in this special ruling it has done an injustice.

Q. Didn't you say if you were doing business at the Missouri River you would be advocating the very same thing that the jobbers there are advocating?

A. I said that, meaning by that if you please, that in competition of trade to-day it is considered legitimate for any distributing center to look out for its own interest.

Q. That is what St. Louis is doing in this case isn't it?

A. Yes, sir, it is surely.

Q. Has there been any request at all from you for a change of the rate from the Mississippi River crossings to the Missouri River cities?

A. No, I do not consider the class rates are excessive between the rivers.

Q. You are well aware of the fact that the longer the haul the cheaper the rate per ton per mile should be?

A. I do not think the Interstate Commerce Commission takes that position.

Q. I am asking you whether that is not the fact?

A. I do not think it should be to a discrimination against intermediate territory.

Q. Are you not well aware of this fact that to take traffic and bring it to St. Louis and unload it and there incur expenses
664 of handling it renders it more expensive to deliver that traffic than where it is carried through to the Missouri River cities?

A. That is true, and that burden is on me and therefore I should not be put to any further burden in a discrimination in rates.

Q. Isn't that true because of your location?

A. No, sir.

Cross-examination.

By Mr. ATWOOD:

Q. Have you any competitor in Detroit?

A. No, sir.

Q. Parke Davis the big drug house?

A. We are not druggists. We do not handle *and* prescription materials made by Parke Davis or any other proprietary medicine concern.

Q. Do you have any competitor in the Central Freight Association territory. You know what that means?

A. Yes, I have made an exception if you remember in your Texas interrogatories of Cleveland. There is a chemical house in Cleveland that we meet occasionally in Oklahoma and in the west.

Q. The name of the house?

A. Harshaw Fuller Goodwin Company.

Q. A big concern?

A. Yes, sir.

Q. Do you meet them in your trans-Missouri and southwestern territory?

A. We meet their quotations.

Q. They are in that field after that business the same as
665 you are?

A. Yes, sir.

Q. Do you know how the freight situation is with you as compared with the Cleveland men on their combination which is through to St. Louis and from there out?

A. No, sir, I do not because that does not cut an important figure with us and I have never had occasion to figure it up.

Q. Is the lack of importance due to the inconsiderable size of that house or the fact that they do not attempt to do business in the territory under consideration?

A. It is a fact that Cleveland is not strictly speaking a competitor of St. Louis.

Q. You did not mean to be understood as making even Cleveland an exception to the rule that the middle west was not a competitor of yours?

A. Under oath yes, there is a competitor there that we hear of occasionally.

Q. You say you do not know what the comparative rate situation between you and that competitor in the territory under consideration is?

A. It is not important enough for us to consider as a competing point.

Q. What is the difference between the third and fourth class rate between the rivers and the commodity rate on the stuff that you say moves by commodity rate?

A. A large portion of it is fifteen cents a hundred.

Q. Of these commodity things soda ash was one?

666 A. Soda ash, Caustic soda, silicate of soda.

Q. Those things that are used in connection with the water that you spoke of a little while ago?

A. No, sir, soda ash is used in connection with purifying and softening water. Caustic soda and silicate of soda are used by the soap makers and by the packing houses.

Q. Does your commodity rate extend to L. C. L. shipments?

A. No, sir.

Q. It is always whole car load shipments?

A. To a large minimum.

Q. And these shipments that you have reference to between the rivers, what proportion is less than car load lots and what proportion is in car load lots so that you might apply the commodity rate?

A. The loss in car business is reduced to a minimum on account of this excessive difference between class rates and commodity.

Q. Whatever the reasons the L. C. L. shipments on the 15 cents excess over the commodity is a negligible quantity as the situation now is if I understand you correctly?

A. Under present conditions we are able to get some business in Kansas and Nebraska in less than car load lots. If much more burden is added to it we won't be able to get any.

Q. What proportion of the business moved under that classification as compared with the other?

667 A. I think I said about one half of our business was less than cars and one half cars.

Q. Of this stuff the part employing commodity rate is one half moved by L. C. L.?

A. I don't think as large a proportion as that. Probably not over a quarter.

Q. These commodities whatever they are wherein the difference between the inter-river commodities and the inter-river class is 15 cents on the hundred pounds, do you think that three-fourths moved by car load and one-fourth by L. C. L.?

A. Possibly so, yes, sir.

Q. You mean by that that is your judgment about it?

A. Yes.

Q. When you use the expression that possibly it may be 25 cents do you desire to be understood that in your judgment it is approximately 25 per cent?

A. Yes, I am not definite and positive about it.

Redirect examination.

By Mr. McHUGH:

Q. One matter I should have asked in direct. Have you had occasion to examine the tonnage of St. Louis merchandise with a view to ascertain the effect of a burden upon that tonnage in the way of transportation?

668 Mr. WALTER: I object to this witness giving it. Let the figures be presented by some one who made them.

The WITNESS: In a civic work I have been doing in St. Louis this last three years, yes.

Mr. McHUGH:

Q. Just how did you come to do it if there is no reason why you should not tell it?

A. It is rather a long story.

Q. Show how it came about?

A. There has existed as many of you know for a great many years a discriminating arbitrary against the city of St. Louis to the extent of the bridge toll here in the seaboard business to the west through St. Louis. When the Chicago and Alton Railway was completed twenty-seven years ago, their Kansas Division they elected in the Traffic Associations to make East St. Louis the eastern terminus of their line, and in adjusting traffic conditions at that time East St. Louis was the western boundary of the Eastern associations and the eastern boundary of the western associations. The sums of the locals from the seaboard to the Missouri River were the rate to East St. Louis and from East St. Louis to the Missouri River. That resulted in throwing upon the merchant and manufacturer of St. Louis the cost of transporting the merchandise across the river, putting that as an extra burden upon this community. In other words St. Louis was treated as though it were located on a stub line a few miles from a junction point. There was no discrimination against
669 St. Louis proper and East St. Louis, the junction point, but the business in and out of St. Louis was a burden to the extent of the bridge tariff upon this community. The products of the mines and the packing houses and the soil were taken from the west by our doors to East St. Louis at the same rate that they were taken to this side of the river. Merchandise was moved from the seaboard territory to Kansas City on combination of the rates through East St. Louis which put the burden on the merchant of St. Louis of the bridge arbitrary. About three years ago this municipality created what was known as the Municipal Bridge and Terminals Commission, providing that the Mayor of the city of St. Louis should be chairman of it, that the President of the Board of Public Improvements should be a member of it and that the Mayor should select seven commissioners to serve without compensation on that commission, three of them, one each, to be selected from the membership of the Merchant's Exchange, the Manufacturers' Association and the Business men's League of this city. I was on that Commission, have been on that commission, we are still in existence, we are not through, and we have brought about a rate adjustment here at St. Louis which now provides for the sum of the locals through St. Louis proper, that is to say St. Louis in reality is the basing point, so that
670 the sum of the locals from seaboard territory to St. Louis and from St. Louis to Missouri River points constitute the through rate, the through rate is the sum of the two locals now through St. Louis and not East St. Louis. In making the estimate through our expert of what that had cost the City of St. Louis on its tonnage applicable under what that burden was, in the year 1907—you understand the average toll is two cents a hundred—of course some grosser commodities like coal are less than that—but strictly speaking it is two cents a hundred—of the tonnage of 1907. By actual figures

prepared by our expert that amounted as a discrimination and burden against the commerce of the City of St. Louis to over two millions of dollars for the one year of 1907.

Recross-examination.

By Mr. WALTER:

Q. The figures there were based on all the tonnage coming to St. Louis going to points beyond without reference to points of origin?

A. That was based only on the business which stopped in St. Louis and was applicable to that.

Q. It doesn't have any limitation as to point of origin.

A. Anything outside of a radius of a hundred miles.

Q. It was not limited to class traffic at all?

A. No, sir it was the entire tonnage into St. Louis outside of a hundred miles radius.

671 JACKSON JOHNSON, a witness on behalf of the complainants was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. What is your name?

A. Jackson Johnson.

Q. You reside in St. Louis?

A. Yes, sir.

Q. You have resided here how long?

A. About eleven years.

Q. What business are you in?

A. Shoe manufacturing.

Q. In connection with what company?

A. Roberts Johnson & Rand Shoe Company.

Q. Where do you do business, where do you sell your goods?

A. Every state in the Union, and a good deal in foreign countries.

Q. You do a large business?

A. Yes, from our standpoint.

Q. Where are your competitors?

A. Our main competitors are on the seaboard, New England, New York and Philadelphia.

Q. Without going into detail you know the rate situation that has obtained here in St. Louis with respect to your rate to the Missouri River points from St. Louis and that rate being the rate paid by your competitors in the seaboard territory?

A. I have a fair idea of it.

Q. I do not mean the amount of the rate but the relation?

672 A. I know the relation, yes.

Q. You know the nature of the order of the Commission involved in this case?

A. That a reduction between St. Louis and the Missouri River points of 9 cents be made.

Q. In favor of—

A. In favor of points east of Buffalo and Pittsburg.

Q. That is 9 cents on first class?

A. That applies to everything we handle. We are hit on every corner.

Q. You may state what the effect upon your business, and business conditions at St. Louis would be resulting from the enforcement of that order?

A. That will have the effect of placing us at a disadvantage with every manufacturing point of importance in our line of business.

Q. What will be the extent of the injurious effect?

A. Take on the volume of our business and the differential as figured out and applying to the territory in which we do the larger volume of our business I should say it would place us at a disadvantage in about 70 per cent of our business.

Q. That would be 9 cents a hundred?

A. That would be 9 cents a hundred or on we will say five million pounds. Our values are pretty high, something like two dollars a pound I think we estimate it at.

673 Cross-examination.

By Mr. WALTER:

Q. What per cent do you say would be affected by this rate?

A. Something like 70 per cent of our business.

Q. Seventy per cent of your business comes in competition with shoes which would take the reduced rate into the Missouri River territory?

A. Seventy per cent of our business is done west of the river.

Q. Do you want to be understood as saying that this reduced rate from seaboard territory applies to points where you sell 70 per cent of your business?

A. Well, that is speaking in a general way. Of course I have not the exact figures.

Q. It is a mere surmise on your part?

A. No, it is better than that.

Q. Where do you get your figures?

A. Long years of experience in figures gives a man a pretty good idea where he is doing business. I know about 70 per cent of our business is in the west.

Q. Where?

A. It covers the entire west.

Q. Isn't it true that under the existing rates you can today deliver your goods at Lincoln, Nebraska cheaper than the man can deliver them who lives at Omaha, the jobber?

A. We do not recognize Omaha as a competitor. It is no competitor of ours.

674 Q. Is Omaha or Kansas City or St. Joe or any of them a competitor of yours?

A. To a small extent, but St. Louis through business our business alone would amount to more than all the Kansas City, Omaha, Denver, Minneapolis, St. Paul business put together. Our strong competitors are in the east.

Q. Cincinnati is one of your main competitors?

A. No.

Q. Didn't you just say?

A. No, I said east I meant the seaboard.

Q. You have strong competitors who do business from Cincinnati haven't you?

A. To a limited extent. Cincinnati's volume does not compare with St. Louis.

Q. St. Louis leads the world in the shoe business?

A. Yes, modestly speaking.

Q. Isn't it true that your competitors from Cincinnati today have no advantage at all from the Commission's order?

A. No, I should not say Cincinnati had any advantage.

Q. So that your competitors at Cincinnati do business with you on the same relative ratio as heretofore?

A. Yes and so with Indianapolis and a great many other that do a small shoe business. We are looking to the points where we have the strongest fight to make.

Q. Where is your strongest fight?

675 A. I should say the Boston section.

Q. You sell shoes right in Massachusetts?

A. We do some business in Massachusetts.

Q. You pay the rate east?

A. Yes, we have to equalize it in a great many instances.

Q. What is the total value of your business in a year?

A. About eleven million dollars.

Q. I believe you said in your direct examination that on the existing rates you compete with shoe manufacturers the world over?

A. We do.

Q. You make a profit on your business?

A. Yes, sir.

Q. Nine cents on the hundred pounds would be less than a quarter of a cent on a pair of shoes wouldn't it?

A. Yes, I should say it would not figure more than that.

Q. Isn't it true in ordinary competition that a quarter of a cent on a pair of shoes is entirely disregarded by the salesman and by the purchaser even?

A. Whenever you make it a quarter of a cent more, either the customer has to pay it or you take it out of your own pocket. A quarter of a cent there goes to make up the profit on shoes because they are sold at a close margin.

Q. Do you say that a quarter of a cent on a pair of shoes represents the margin of profit?

A. No.

Q. It is not one per cent of the profit on a pair of shoes, is it?

676 A. We make a great many shoes with a profit that won't exceed one cent a pair.

Q. Can you give me the name of a single pair of shoes that you only make one cent profit on?

A. Yes, and bring them down here and show them to you and they are devilish good shoes too. We have got a shoe that we call Star

Common that we probably make a thousand pair of a day and do not make a cent of profit on.

Q. That is true because they are an advertising shoe?

A. No, we advertise everything.

Q. Those are your leaders?

A. Not necessarily so. We use nothing but leather in our shoes. We have got to compete with the east on something that uses a great deal of substitute for leather. We make one shoe especially of all leather. We make it at a price to compete with the shoddy stuff that is turned out from the east.

Q. Do you fix a selling price on that shoe?

A. Yes, on everything we have got.

Q. A retailer's selling price?

A. No, sir.

Q. Do you have no limit on the price he shall sell them for?

A. None except our salesmen. They have a limit.

Q. You do not mean to say that this reduced freight rate would ever reach the consumer?

A. We try to figure to make so much money and if it costs us more on freights and labor and material and so on we know we have
677 got an advance. We do not take notice probably of every quarter of a cent.

Q. Would you say the one quarter of a cent freight on a pair of shoes would make any difference to the jobber or retailer?

A. He might not get quite so good a shoe as he would get if he did not have that quarter of a cent.

Q. Do you mean to say that the quality of the shoe would be affected by this quarter of a cent?

A. I do not say it necessarily would. I say all things of that kind have a tendency. A quarter of a cent on every pair of shoes we make if we are doing business on a close margin we must take care of somewhere. We may put it on that shoe, we may put it on another shoe.

Q. What was the profit on your business last year?

Objected to as immaterial and not proper cross-examination.

A. We made a statement to the Agency. They can tell you probably.

Mr. ATWOOD: The Agency is not on the stand and you are.

A. I don't know. If the attorneys say I must answer that I will answer it.

Mr. WALTER: All that I want to know is the profit of your business?

A. Our manufacturing profit was less than two per cent on the volume of our business.

678 Q. Do you mean on the annual volume?

A. Last year, yes, sir.

Q. You turn that over and over several times in the year?

A. Two per cent on the gross sales.

Q. Your main profits are made from your jobbers' business?

A. We make more on that end than on the other.

Q. What was the total profit to the Roberts Johnson Rand Shoe Company during the year?

The WITNESS: Must I answer that?

Mr. McHUGH: I would not take the responsibility of saying no. The way we are proceeding here is that they ask the question and there is no court here to pass upon it. I think it is an improper question entirely.

The WITNESS: I will answer it. You could get that information anyway. Our jobbing profit is about \$500,000 in addition.

Mr. WALTER: You had how many pairs of shoes?

A. We did a business of about eleven million dollars.

Q. How many pairs of shoes?

A. I should say something between seven and eight million pairs.

Q. You made a profit of about \$750,000?

A. About seven hundred and twenty-two I think.

Q. It is plainly apparent isn't it from your statement of figures the number of shoes made and handled and the profit made that one fourth of a cent a pair is only \$4500.

679 The WITNESS: One million pair would be how much?

Mr. ATWOOD: The point is this, you said five million.

The WITNESS: I said five million on the basis that we did about eleven million dollars worth.

Mr. WALTER: At nine cents that would be \$4500.

A. On five million pounds. Aren't you wrong about that?

Mr. WALTER: I am not good at figures.

Q. If it is true that this freight rate only makes a difference of \$4500 to you and you say only 70 per cent is affected then it simply means instead of you having a profit of \$722,000 you would only have a profit of \$717,500?

A. If your figures are right it looks as though that would be true. Who is going to pay that \$4500? Must I put it on Jim Jones or John Smith out in Kansas and Nebraska and through there?

Q. It is not such a disastrous business as you thought, this freight rate business?

A. I did not say that would put us out of business.

680 Redirect examination.

By Mr. McHUGH:

Q. Do you think a \$4500 unjust discrimination is that much unjust discrimination?

A. I do not see why we should be taxed \$4500 or 45 cents unjustly.

Q. Isn't there more than mere dollars and cents in the actual reduction? As a business man what do you say as to the effect on competition of a competitor of yours being able to go out and say I have got a lower rate?

A. I am glad you brought up that point. There is one thing that possibly these gentlemen, not being commercial men, would not appreciate as strongly as I would. A Boston man goes to the Kansas dealer and says to him I can give you a rate nine cents less than

before, and no man that lives is smart enough to look at a shoe and tell within five cents a pair what it is worth. If you could say Here is a commodity with a fixed value you could overcome that, but when they go in and say we can give you five cents less it has that impression on the mind of the dealer. In St. Louis we spend millions of dollars and we take pride in saying that we have built up the greatest shoe market in the world in the shortest length of time. We have done it by advanced business methods and by spending money, and giving people good shoes and selling them very close.

681 Recross-examination.

By Mr. WALTER:

Q. Isn't it true that there is nothing in the world to keep your salesmen from saying we can make a price less than anybody else?

A. We can say that but we have got to show it, especially when we are in Missouri.

Q. Does the retail man wait to see what another shoe salesman can make as to the price on the goods or does he take the statement of the first man that comes along?

A. If I go, to a man and say I can give you reduced rates from Boston and you know Boston is the headquarters of shoes, and I can give you a rate 9 cents less than before and proportionately less than St. Louis, the merchant doesn't stop to look any further. He is hanging in the balance. He looks at Boston as the great shoe center and says, I will try Boston this time because I can get a lower rate. We will lose a lot of business or meet it in some other way.

Q. It simply resolves itself into whether you will meet the figures?

A. We cannot meet the figures because there is no fixed value to shoes.

Q. The retailer is simply buying on a guess?

A. He is buying because he gets a relatively lower rate.

Q. Does not your man have the same chance to say to this retailer that he can make the shoes nine cents less?

682 The WITNESS: Why should we be put on the defensive?

Q. You sell in competition with Boston and Massachusetts?

A. Yes, we have got to equalize in Boston but the Boston man comes out here and does nothing.

Q. They have to equalize too don't they?

A. No, they have that advantage, they are an old market.

Q. That doesn't make any difference when they come into the field to sell shoes they meet your figures or you meet theirs if you get the business?

A. The shoe business is built largely on confidence. It is built by making good shoes and proving it.

Cross-examination.

By Mr. ATWOOD:

Q. When you are in this trans-Missouri territory of course the purchasers pays simply the freight from St. Louis?

A. That is all.

Q. He simply pays the St. Louis trans-Missouri rate whatever it is?

A. Yes.

Q. That of course is considerably less than the Atlantic seaboard rate to that same point?

A. Yes.

Q. Do you think and desire to be understood that that customer comes in and figures as to what that stuff is costing you to get it to St. Louis and compute what the combination is on St. Louis as compared to that and figures out that on the whole there is a
683 freight rate of nine cents saved when as a matter of fact the rate that he pays is bigger from New England than from St. Louis?

A. No. I will take a hypothetical case. You take a man in Philadelphia, a shoe manufacturer there, he goes to Wilmington or Newark or some other kid town and he buys his kid, turns it into shoes and ships those shoes to Kansas City and he makes the difference of nine cents a hundred. In other words we have bought a car load of kid in Philadelphia and shipped to St. Louis and we would pay nine cents a hundred relatively more for the privilege of manufacturing shoes in St. Louis than the man in Philadelphia would have to pay provided we shipped these shoes west. We could go to Kansas City and still compete on the same basis as the man in Philadelphia but at St. Louis we are in the cold middle.

Q. But the purchaser in St. Louis if he pays freight when he buys from you pays 60 cents a hundred?

A. Yes, sir.

Q. If he buys in Philadelphia he pays \$1.48?

A. Yes, he does that, but you don't go through with it. The man in Philadelphia gets nine cents a hundred less rate on his raw stuff to make those shoes and therefore he has nine cents a hundred better.

Q. Do you think a Kansas City purchaser goes into that
684 investigation when he is presented with the two rates?

A. It is a question of doing business on a clear conscience. You are armed for the fray when you know that you are in the best position in the world to do business.

Q. I ask you if you think when he knows that difference between 60 and 1.48 he is going to figure out what the thing costs you?

A. He won't stop to figure when the man tells him he is giving him a nine cent better rate. He says, I have a reduction of nine cents and I will give you that.

Q. Take the nine cents off and then where is he?

A. He has got nine cents advantage.

Q. Nine cents from one forty two makes it one thirty-three. You have still got 60 cents as against one thirty-three haven't you?

A. I will have to say yes but that don't answer all the question.

Mr. ATWOOD: That is the only question I asked you.

Recess to two o'clock.

TWO O'CLOCK, P. M.

GEORGE W. SIMMONS, was recalled and further deposed as follows:

685 Mr. McHUGH: There was some testimony which you gave with respect to a change in the rates to the Missouri River through St. Louis. State just what that change was. What is the rate through East St. Louis?

A. Before the change was made in the bridge arbitrary here the rate first class from New York to East St. Louis was 87 cents and the rate from East St. Louis to Kansas City 60 making \$1.47 for the through haul. The rate from New York to St. Louis proper was the East St. Louis rate of 87 cents plus two cents to get into St. Louis and from St. Louis to Kansas City or Missouri River 60 cents, making \$1.49 as against \$1.47. At that time we were at a disadvantage of two cents as compared with the through movement through East St. Louis. When the rates were adjusted East St. Louis rate was raised one cent to 88 cents and the St. Louis rate was lowered one cent to 88 cents, the rate from St. Louis to Kansas City remaining the same the through rate is now \$1.48 whether it goes through East St. Louis or St. Louis.

Q. That was the change that was made?

A. Yes.

Cross-examination.

By Mr. WALTER:

Q. In other words they lowered your rate two cents and raised the Missouri River rate one cent making a difference of three cents in that way?

686 A. No, sir, they lowered our rate one cent and raised the other one one cent and put us on an equal basis whereas before we had been two cents at a disadvantage.

Q. In other words the relative relation as compared with the relation before that change is that you have now two cents advantage over what you had heretofore in competing with the Missouri River cities?

A. We are now two cents better than we were when we were discriminated against to that extent.

Q. In other words the basis now on which you can compete at Kansas City is two cents better than it was before the change?

A. Yes, sir.

Q. You are president of the Traffic Club here aren't you?

A. Yes, sir.

Q. Made up largely of railroad traffic officials?

A. And shippers.

Q. And the traffic officials of certain shippers?

A. Yes, a large number of shippers.

Q. There is a shipper's organization having another name isn't there?

A. Yes, sir, that is purely a social organization.

Q. You are president of that organization?

A. I am.

Q. Don't you sell a great deal of your supplies to the railroad companies?

A. Not a great deal in proportion to our total tonnage but we sell some.

687 Q. It is a very important part of your traffic?

A. Yes, sir.

Q. Good customers of yours?

A. Yes.

Mr. McHUGH: You sell in competition with other people?

A. Largely eastern manufacturers, almost entirely.

Cross-examination.

By Mr. Atwood:

Q. What is the name of this other organization of business men or shippers, the one that Jim Watkins is at the head of?

A. There are two, the Merchants Exchange is the organization of the grain men. The Business Men's League is the organization of the commercial men.

Mr. McHUGH: Are you a member of this Merchant's Association?

A. I am a member of the Business Men's League.

Mr. Atwood: There are three business men's organizations one of which has as part of its membership railroad officials?

A. That is purely social. There are a number of others too. The Railroad Club for instance is a technical organization.

Q. That is purely railroad men I presume?

A. I don't know. I am not a member myself. I am under the impression that they have some men in there who are not.

688 Q. It is largely composed of railroad men?

A. Yes, I think so. Possibly supply men are in there too.

The witness TAUSSIG was recalled and testified as follows on behalf of complainants:

Mr. FYFFE: You were sworn and testified yesterday?

A. Yes, sir.

Q. Since yesterday have you looked up the records of your company with regard to the matter of the expense paid by the Wabash Railway Company for solicitors in the east for traffic to St. Louis and western points?

A. I have.

Q. Can you state what that expense for solicitors amounted to in the last year?

A. I got the statement for one month, for the month of November, 1908.

Q. How much was it that month?

A. The expense of soliciting in the east in New York and Boston and the seaboard was \$6402.86.

Q. For that one month?

A. Yes.

Q. Does your road get any business from seaboard points class merchandise?

A. Yes, sir.

Q. What business does it get, speaking of it now from a comparative standpoint?

A. We get L. C. L. traffic from New York, Boston and New England points.

Q. Do you have any that comes in a through car?

A. Yes, there is one through car per day in connection with the Lackawanna railroad for Missouri River points Kansas City.

Q. Is that all you have in Missouri River points in through cars?

A. Yes, sir.

Q. Where does the Lackawanna make connection with your line?

A. At Buffalo.

Q. Then that car goes west from Buffalo every day?

A. Yes, sir, that is a daily car.

Q. Why?

A. Because the tonnage does not justify a through car.

Q. That is all you receive from the Lackawanna is it of these classes from the seaboard?

The WITNESS: In L. C. L.?

Mr. FYFFE: Yes, for Missouri River points?

A. Yes, sir.

Q. Do you receive from any other of your eastern connecting lines, east of Buffalo?

A. These lines load cars on St. Louis.

Q. What lines do?

A. The Lehigh Valley and other fast freight lines that we operate, from Boston and New York and Mechanicsville.

Q. Does that include what you get from the D. L. & W.?

A. The D. L. & W. also load a St. Louis car.

Q. That is the one you have just been speaking of?

A. No, that is Lackawanna Kansas City car.

Q. I want you to confine your attention to the freight that is going from the seaboard to Missouri River points. I understand that you run one car a day over the Lackawanna in connection with your line at Buffalo carrying seaboard merchandise of these classes?

A. Yes, sir, to the Missouri River.

Q. In addition to that do you get any seaboard to Missouri river business from the other lines?

A. Yes, sir.

Q. That car is all you get from the Lackawanna, is that right?

The WITNESS: Let me get this straight. You mean through cars only?

Mr. FYFFE: Yes.

A. That is the only through car we get.

Q. The only through car you get anywhere?

A. Yes.

Q. Or seaboard to Missouri River points. Do you get any other

freight of these classes over the Lackawanna from seaboard destined to Missouri River points?

A. No, not from the Lackawanna.

691 Q. Do you get from the seaboard destined to Missouri points from other eastern connections besides D. L. & W. delivering to you at Buffalo.

The WITNESS: In through cars?

Mr. FYFFE: No, just answer the question.

A. We do.

Q. What is that loaded on for?

A. That is loaded on St. Louis.

Q. How much does that amount to, have you any idea.

A. I cannot give you the exact figures.

Q. Does it amount to as much as a full car a day?

A. No, sir, it does not.

Q. Does it amount to as much as 10,000 pounds a day?

A. No, sir.

Q. If it did amount to as much as 10,000 pounds a day in the ordinary course of railroad business what would you do with it?

A. We would run a through car.

Q. What does your Lackawanna through car average up in the last year?

A. 10,600 pounds per car, average load per car.

Q. Do you send any through cars from freight assembled at Detroit to Missouri River points?

A. We run one daily car from Detroit to Kansas City.

Q. Do you know what the average of that has been the last year?

A. 15,601 pounds for the period November 1907 to October 1908 inclusive.

692 Q. Do you run any through cars from St. Louis to the Missouri River points?

A. Yes, sir.

Q. Do you know what the average load of those cars of business originating at St. Louis and destined to the Missouri River points is for the same period?

A. I have not got the figures separated as between the freight originating at St. Louis and that which originates beyond. I have got the average tonnage of the car from St. Louis to Kansas City.

Q. What is that?

A. 16,734 pounds for the same period.

Q. Do you run through cars of L. C. L. from Chicago to Missouri River points?

A. Yes, sir.

Q. What is the average in the same period from November 1907 to November 1908 of this freight from Chicago destined for the Missouri River points?

A. 16749 pounds.

Q. Do you run any car loaded at Detroit for Kansas City L. C. L. merchandise of these classes?

A. Yes, sir, I just answered that.

Q. What is the average load of that car during the period in question?

A. I thought that was already answered.

Q. See if you made a mistake. What is it from Detroit?

A. 23,945.

Q. Your first answer was incorrect?

A. Yes, sir, of 15,60-.

Q. Have you made any investigation to see how much the expense is of your local solicitors at St. Louis getting freight business that originates here in St. Louis destined for western points?

693 A. Yes.

Q. What do you find that it comes to?

A. \$2240.20 for November 1908.

Q. How did you happen to pick out the month of November, 1908?

Q. They just happened to hand me the vouchers for that month. In investigating the matter however, I find that these figures do not vary except as to the expense accounts. They might vary a few dollars a month.

Q. Expense account of the solicitors?

A. Yes, in other words the salaries remain the same.

Mr. Atwood: November is the month they buy the overcoats, I suppose?

A. No, they just picked out that month.

Mr. FYFFE:

Q. Have you got any figures that your investigations have shown you of the difference in amount of the freight business picked up on the seaboard and picked up at St. Louis?

A. No, sir.

Q. The difference between the amount of freight originating on the seaboard coming through your line destined for Missouri River points and freight of the same character originating at St. Louis and destined there?

A. No, we have not got those.

Q. All freight shipped from the seaboard against all freight shipped from St. Louis?

694 A. Not on all freight, no, sir.

Q. What have you got it on?

A. I have got the total amount in that one car, total tonnage in the through car for the year 1908.

Q. What can you say about the total tonnage originating at St. Louis, how does it compare with what originates in the seaboard and is brought in that car, is it greater or less?

A. The bulk of the traffic originates at St. Louis.

Q. You have that you say?

A. I have not got the figures, no, sir.

Cross-examination.

By Mr. WALTER:

Q. That \$6402.86 for the month of November, 1908, includes all that was spent in soliciting freight and passenger business both, doesn't it?

A. Yes.

Q. You have no idea as to what proportion of that is properly chargeable to seaboard business going to the Missouri River cities?

A. No, I do not know how that would be proportioned. It would be proportioned the same all the way through, though, that is to say the same proportion would apply to St. Louis or Chicago or any other point as to New York.

Q. Isn't it true that that solicitation covered all the business from seaboard points and Boston points going to any place on your line or beyond your line?

A. Yes, sir.

Q. Any freight that originated there which your line handled any place?

A. Yes, sir.

Q. So there is a very large class of traffic that is included along with the seaboard traffic?

A. There is some car load, yes, sir.

Q. That applies to the car load and less than car load business?

A. Yes, sir.

Q. You do receive car load business from the Lackawanna?

A. Yes on the lower class freight, lower than fourth.

Q. When you speak of your 10650 that is a single car that is scheduled to come over that line every day?

A. Yes, sir.

Q. But that does not show that you have not got other traffic on any given day less than car load in their other cars?

A. This is a New York Kansas City car. That is all of the freight that originates in New York coming from the Lackawanna road and routed via Wabash destined to Missouri River.

Q. But in the same train with that car there may be on certain days traffic L. C. L. going to Missouri River cities not carried in that particular car?

A. No, sir.

Q. Do you mean to say that there is never a single day when that one car won't accommodate all your shipments for Missouri River cities?

696 A. No, sir, because 10,000 pounds is not a maximum car load.

Q. You do not understand my question.

Mr. FYFFE: Yes he does perfectly.

Mr. WALTER: Let us see, isn't it true that there are times when you have more than a single car load of L. C. L. freight handled to you by the Lackawanna that takes less than car load rate?

The WITNESS: Going where?

Mr. WALTER: Going to Missouri River cities?

A. No, sir.

Q. Do you want to be understood as saying that there is never a single day during the year when you did not have freight that could be and was carried in a single car for the Missouri River of the first five classes?

A. I say in connection with the Lackawanna that all the freight originating in New York on the Lackawanna railroad routed via the Wabash railroad is loaded into that one car.

Q. I am speaking of seaboard points, not alone New York?

The WITNESS: I am talking now about this one New York car.

Q. I want to know if that is all the seaboard business you have?

A. No, sir.

Mr. FYFFE: Via the Lackawanna you are confining your question to that I believe.

Mr. WALTER: No, I ask him whether the one car of 10,600
697 pounds was all the seaboard traffic of the first five classes which came to you from seaboard points or Boston points over the Lackawanna on any day?

A. I think you are a little mixed there because some of this freight from Boston does not come over the Lackawanna at all.

Mr. FYFFE: I think you can answer the question.

(The question was repeated.)

A. No, there is other freight comes to us over the Lackawanna from seaboard points in other than this one through car, but all of the freight originating at New York comes in this one through car.

Mr. WALTER: So that when you spoke of this New York car you were undertaking to give the impression that that was all there was?

A. No, sir, I was not.

Q. As a matter of fact it is not a considerable portion of the seaboard traffic which the Lackawanna hands you each day at Buffalo?

The WITNESS: For Missouri River points?

Mr. WALTER: Yes.

The WITNESS: It is about 40 per cent.

Q. There are other roads that hand you freight at Buffalo of this same class?

A. Yes, sir.

Q. What is there if anything to prevent you putting
698 through freight in with this 10,650 pounds to make the car full?

A. For instance the Missouri Valley Railroad that loads the Missouri River freight does not deliver its freight to the Lackawanna to go over the Wabash.

Q. But you take this car that is coming over the Wabash, you have it in your possession at Buffalo?

A. Yes, sir.

Q. What is to prevent you putting other freight in there and filling that car up?

A. If we did that we would break our schedules. We would lose twenty-four hours in the movement of the freight. That is the very reason we run this car with light tonnage, in order to expedite the movement.

Q. Do you mean that is all the Missouri River freight you handle in that train?

A. I did not say so.

Q. It is not true is it? .

A. No, sir.

Q. You do handle several cars in the same train?

A. Yes, sir, to go to Missouri River points or other points.

Q. Wouldn't it be just as expeditious to consolidate that train at Buffalo as at St. Louis?

A. In order to consolidate the freight you have got to put that freight at a freight house and then switch cars, seven or eight other cars to that freight house and transfer that freight from the seven cars into the one car, and if we did that we would break our 699 through schedule.

Q. You have got freight houses at Buffalo, that is your eastern terminus?

A. Yes, sir.

Q. You have freight facilities there necessary to consolidate the shipments?

A. At Buffalo we have no terminals of our own. Another line has to handle our cars just the same as the Transfer Railroad Association handles cars here. We haven't got control of the movement, and therefore the delay incident to the consolidating cars as you try to do would be so great that it would break our schedule and coming into competition with other lines we would handle no traffic. Instead of handling 10,000 pounds we wouldn't handle anything.

Q. Is it not true that you could take this 10,650 pounds and add it to eight or ten thousand pounds more and save the haul of an extra car one in three all the way from Buffalo to St. Louis without the expense of any material delay to the shipper?

A. If time was no factor, yes, sir.

Q. I will ask you what the average time is from seaboard territory to the Missouri River?

A. We make fourth morning delivery at Kansas City making the through schedule.

Q. From New York City?

A. Yes, sir.

Q. You deliver that freight at Missouri River cities the 700 fourth morning after you receive it?

A. Yes, sir.

Q. How much time is occupied in consolidating here?

The WITNESS: At St. Louis?

Mr. WALTER: Yes.

A. Twelve hours.

Q. Couldn't you in twelve hours at Buffalo put 8,000 pounds into the car that has 10,600 pounds?

A. We could if our schedule trains ran so. In other words if we were to try and run a train for this one car and schedule the train out on the time table so as to accommodate the transfer of this freight into this one car we could do it, but our St. Louis time is

so that we make a direct connection with the Lackawanna road and as soon as that freight is delivered to us at Buffalo our train is ready to go the minute the train is made up, without any possible delay. To handle the freight on your theory it would mean a 24 hour delay because these trains are scheduled once in every 24 hours.

Q. Do you mean to say that you have only one through train from Buffalo?

A. Yes, one fast freight.

Q. Where does your train from Detroit pass?

A. Our trains from Buffalo go through Detroit.

Q. What is the reason you could not at Detroit consolidate this?

A. For the very same reason that I gave you at Buffalo.

701 There you have your own terminals at Detroit?

A. Yes, sir.

Q. Isn't it simply and solely a question of whether you shall consolidate your freight either at Buffalo or Detroit or haul an extra car one in three into St. Louis?

A. No, sir.

Q. What is the difference?

A. In the first place the traffic for example taking the St. Louis traffic out of these cars in such case the tonnage would be exceedingly light, but in order to get tonnage in these cars we load St. Louis as well as points west of St. Louis into one car making a fair average tonnage and allow that car to go through which makes third morning delivery at St. Louis and by transferring at St. Louis with a delay of twelve hours we get the car into Kansas City the following morning.

Q. What other road do you get cars from at Buffalo?

The WITNESS: Through cars?

Mr. WALTER: Seaboard traffic.

A. From the Lehigh Valley, West Shore, and we get cars through the Boston & Maine and New Haven.

Q. Some of these cars are through cars?

A. On St. Louis.

Q. You do consolidate some freight at Buffalo?

A. No, sir.

Q. For St. Louis or beyond?

702 A. Freight that is delivered in Buffalo in their other than through St. Louis cars—I am talking about freight for the Missouri River points—Buffalo loads that freight on Detroit and Detroit loads it on to Kansas City.

Q. Let us see if this is correct: you receive freight from these various lines five or six that you have named, do you mean to say that you do not consolidate any freight through and put it into through cars than that it comes in in?

The WITNESS: At Buffalo?

Mr. WALTER: Yes.

A. No, sir, not if it comes from connecting lines not where we have got through car schedules.

Q. In other words on all your connecting lines that deliver

freight to you at Buffalo without bulk or from one car to another you bring that freight on to the Mississippi River?

A. Yes, sir, the through cars we do.

Q. I am not speaking now of through cars. The freight you receive whether it is a through car or not, you say you do not transfer it from one car to another. The cars must be through cars then?

A. Buffalo loads cars on St. Louis. Buffalo does not load any cars on Missouri River.

Q. Let me ask you again, isn't it true that at Buffalo you do receive from five or six connecting lines seaboard traffic for
703 various points west of the Mississippi River, and now do you say that you never consolidate any of that freight and put it into different cars than that in which it comes into Buffalo?

A. No, sir, because we have got through schedules with these various lines from the seaboard to St. Louis and the Kansas City freight as I stated yesterday is loaded in these cars on St. Louis.

Q. Let me ask you this question: suppose there is only a thousand pounds of freight in a car coming from seaboard territory and bound for St. Louis or the west, do you haul only a thousand pounds in that car all the way to St. Louis?

A. When we started to run cars we ran very light in order to establish a through car movement. These cars contained freight as I said for not only St. Louis but western points and by allowing them to load these cars with freight including St. Louis freight we are able to get a tonnage which will justify a through car.

Q. When a car comes to you with only a thousand pounds of freight to Buffalo do you mean to say that you do not put any freight in with that car and send it on?

A. I do not know of any cars that we are getting from our connections with a thousand pounds of freight in, because that would have to be a local shipment that may be picked up somewhere in the interior.

Q. Isn't it true that you are simply taking this statement
704 as to this one through car on the Lackawanna as a fair example of the way that business from the seaboard territory is done into the Mississippi River points west?

A. I am taking that as a maximum.

Q. Do you mean to say that is the maximum tonnage on any one car?

A. For Missouri River points, yes.

Q. What is to hinder you from putting St. Louis business in with that car at Buffalo and bringing it to St. Louis?

A. It is simply a matter of competition. We could not compete for instance with the Big Four which makes third morning delivery in East St. Louis and we make only a fifth morning delivery. If we transfer the freight at Buffalo it means twenty-four hours' delay, and we are forced by competitive conditions to run the cars and therefore we try to put as much in these cars as we can and have a fair average tonnage.

Q. Have you an understanding with the other roads similar to that with the Lackawanna for the handling of this traffic?

Objected to on the ground that no understanding with the Lackawanna or any other road has been shown.

Mr. WALTER: He says it is a daily through car over the Lackawanna.

Mr. FYFFE: That is different from an understanding.

Mr. WALTER: Isn't that an understanding with the Lackawanna that they will run a daily through car?

A. We have a loading schedule.

Q. With the Lackawanna.

A. In connection with the Lackawanna for one car a day.

Q. Have you that arrangement with any other railroad?

A. We haven't that arrangement with any other railroad for a daily through car to the Missouri River points?

Q. What reasons can you give for making this arrangement with one road and not with others?

A. For the reason that in connection with the Lackawanna from New York we are able to get tonnage of 10,000 pounds a day average and we run that car through on that light tonnage. The tonnage, however, that we will receive from all other lines, is not sufficient even to make 8,000 pounds a day.

Q. Do you mean to say that you do not receive more than 8,000 pounds of the first five classes at Buffalo from all the other lines save the Lackawanna?

A. I do not say we do not get it from all the other lines but it brings it right back to this question of transfer.

Q. Didn't you just now say that you did not receive 8,000 pounds from all the others?

A. No, I said from all the other lines we do not receive 8,000 pounds. I mean each line individually.

Q. Collectively how much will it amount to if you know?

A. I could not give you any figures on that.

Q. You say that you spend here locally only \$2240 during the month in the solicitation of freight?

A. Yes, sir.

Q. Where do you get that from?

A. From the vouchers.

Q. What vouchers?

A. The vouchers paid by the treasurer.

Q. What treasurer?

A. Our treasurer.

Q. The Wabash treasurer?

A. Yes, sir.

Q. Does that include the payment of every man who has anything to do with the solicitation of freight in St. Louis or East St. Louis?

A. Yes, sir.

Q. You say that of your own knowledge?

A. Yes, sir.

Q. That there is no man outside of that. Does that include office rent?

A. Yes, sir. That is per month.

Q. Does that include office rent?

A. Yes, sir.

Q. How much office rent?

A. \$166.

Q. Does that take into account the space occupied in your main building?

A. Our solicitors are not located in our main building.

Q. Don't you have any freight solicitors in your main building?

A. No, sir.

Q. In your big office?

A. The St. Louis expense includes only the freight solicitors. Has nothing to do with the passenger business.

Q. How many freight solicitors?

A. Five.

707 Q. What do you pay them?

A. They average I suppose from about \$125.

Q. Is any portion of the Freight Traffic Manager's salary in that?

A. No, sir.

Q. The traveling freight agents?

A. The traveling freight agent that is connected with the commercial office, yes.

Q. This is only the commercial office?

A. Yes, sir.

Q. Has nothing to do with the general office. Neither has the seaboard expense.

Q. So that there is a large expense and the largest expense which you have not considered in this \$2240?

A. The expense that I have compared is exactly the same—in other words I have made an exact comparison of the expenses of solicitation of freight in St. Louis and eastern points. I have not considered in my statement showing the expenses of the seaboard any part of the Traffic Manager's salary, the President's salary, the Vice-President's salary, and the same relative figures hold good as between the seaboard and St. Louis in making the comparison of the two.

Q. These figures are not under your jurisdiction at all?

A. No, sir.

Q. They have been handed to you by somebody else?

708 A. No, you raised the question yesterday and I went to the Treasurer's office and got the original paid vouchers for that month.

Q. You do not know that they are all?

A. Yes, sir I do.

Q. How do you know it is all?

A. Of course I had them checked up by the man that handles this expense every month and approves the vouchers.

Q. You don't know that he did it correctly, you cannot swear that they are correct?

A. I cannot swear that these payments were absolutely made. I do not think our treasurer is making payments unless they are on approved vouchers.

Q. Isn't it true that you went and asked for certain information and you got it?

A. No, sir.

Q. And that is the information you got?

A. No, sir, I did not.

Q. Is not that the information you got?

A. I went to the man that handles all these vouchers and asked him to secure for me every voucher covering every payment for these solicitors both at St. Louis and at seaboard points for that particular month, and they were supervised and I was told that these were all the expenses.

Q. You were told, that is all you know isn't it?

A. I know that that statement was checked absolutely by the party that has charge of it.

Q. I want an answer yes or no and then you can qualify it.
709 Is not all you know that you were told they were all the expenses chargeable against local freight, is not that all you know of the truthfulness of this being the entire expense chargeable to local freight?

A. I was advised that those were all of the vouchers that covered these payments.

Q. You do not know that they are all do you of your own knowledge? I am asking you to speak as you would have anybody speak in your case?

A. I would assume that the man that told me they were correct knew what he was doing.

Q. That is all you know, it is an assumption on your part?

A. And I saw the original paid vouchers.

Q. You don't know that they were the only ones do you of your own knowledge?

A. I want to answer that by saying this that I saw the original statements upon which these figures were based, that is to say the vouchers the rent bills, the rent vouchers, and the salary vouchers showing the total amount of salaries paid at these various offices. — know these are all the offices we have got.

Q. Do you know that you were furnished all the vouchers of your own knowledge?

A. I do not know of my own knowledge that they were all the vouchers, but these are the original paid vouchers and the treasurer said those were all the vouchers that he had covering that matter, and the man that checked them up said they were all the vouchers.

710 Q. All you know is that he told you so, isn't that true?

A. That is what I was informed yes.

Q. That is all you know isn't it?

Objected to by Mr. Fyffe.

Mr. WALTER: He persists in evading.

Mr. FYFFE: I object to that remark.

Mr. WALTER: I want an answer as to whether you know any more than that you were told these facts.

Mr. FYFFE: Objected to on the ground that the witness has stated in the most elaborate detail just exactly what happened and how he got hold of these vouchers and what he did with them and any further investigation is only touching on the conclusion of the witness.

Mr. WALTER:

Q. All you know is that you were told these were all the vouchers?

A. Yes as I say they were handed to me. I have told you just how the operation is made.

Q. Why is it that you won't say yes or no to that question?

A. For the simple reason that these figures as they would be gotten by any one I do not care who, securing the original paid vouchers covering expenses of our New York, Boston and other offices and our St. Louis office, as a total go to show that these were all the expenses pertaining to these various offices.

711 Q. You say you have compared the identical expenses for local traffic and the expenses on seaboard traffic in the solicitation of business?

A. Yes, sir. That is to say I have got all the expenses of New York and Boston and eastern offices and all the expenses of our St. Louis office.

Q. Do you say that the same items are included in one as in the other?

A. Simply made up of salaries and expenses.

Q. Do you have the same identical expense item in the case of local traffic and the case of seaboard traffic in these sums you have given, the \$6402 and the \$2240?

A. Yes, sir, all that is covered by these are the salaries rent bills light bills and personal expenses.

Q. Isn't it true you said a moment ago that this \$6400 includes both freight and passenger traffic?

A. Yes, we make no separation at the seaboard as between the freight and passenger. In other words our freight solicitor is also our passenger man. In St. Louis we do make that separation.

Q. Then isn't it true that these figures that you have given do not correctly show the relative cost between soliciting seaboard traffic only of the first five classes going to the Missouri River points and the local traffic originating at St. Louis?

A. It shows it within \$400, because I have got the figures for freight solicitation only at seaboard points.

712 Q. Let us have that then?

A. It would be \$5480.12.

Q. For freight only?

A. Yes, sir.

Q. Do you mean to say that you only spend less than a thousand dollars soliciting passengers in all that territory?

A. Yes, sir.

Q. How did you get that item. Let me see the items from which you get that information?

A. Fast freight line expense is \$3,304.66. The expenses of the eastern office, New York and Boston are \$3,098.20.

Q. What do you mean by the expenses of the offices?

A. I mean that is the salaries and rent and everything else.

Q. That includes freight and passenger both?

A. Freight and passenger both. I have taken one third passen-

ger and two thirds freight and that is the proportion given by your Commission.

Q. It is an arbitrary allotment?

A. That is prescribed by the Commission.

Q. On this particular traffic?

A. Separation of expenses as between freight and passenger.

Q. Don't you know as a matter of fact that on these first five classes the same proportion as to the passenger traffic originating there is not at all the same as the rule where you take the entire passenger earnings of a system and freight earnings of a system?

713 A. It seems to me if your theory is correct—

Q. Not taking my theory at all, I am asking what you know about it?

A. Then in making our statements to the Commission which our officers send they are incorrect.

Q. Don't you know that the principal solicitation in the east is passenger business, on your line?

A. No, sir, I do not know that.

Q. You do not know whether it is or not?

A. I do know that it is not.

Q. From what do you get your information?

A. From the number of passenger trains that we have to cut out on account of not paying.

Q. That is all you know?

A. I know the amount of travel we have out of New York. We are not a New York line in passenger business.

Q. You are superintendent of terminals?

A. Yes, sir.

Q. Do you undertake to say that you know that the relative ratio between the amount of passenger traffic solicited, whether obtained or not, is exactly the ratio of one to two when you take up the freight business?

A. I say that yes, and I not only say that but I think the ratio is liberal for the passenger business.

Q. In other words that the freight business is just double the passenger?

A. The freight business is more than double passenger.

714 Q. You say that you know of your own personal knowledge as superintendent of terminals in St. Louis that the Wabash spends in soliciting business in New York City twice as much for freight as it does for passenger?

A. I say that from the figures as I have shown you there.

Q. These figures you obtained simply by asking for them?

A. Asking for the vouchers.

Q. That is all you know isn't it that you had these figures given to you, you don't know whether they are true or not?

A. I have answered that so often.

Cross-examination.

By Mr. Atwood:

Q. Take this car, the Lackawanna through car that has been spoken of, that through car has its point of origin in New York City?

A. Yes, sir.

Q. It is loaded there by what company?

A. The Delaware, Lackawanna & Western.

Q. And the loading is not in your hands at all because it is in the hands of the receiving line, the line of origin in other words?

A. Yes, sir.

Q. It is then sealed up presumably and its destination ultimately is where, Kansas City?

A. Yes, sir.

Q. It goes unbroken over the lines of the Lackawanna from New York City to Buffalo?

A. Yes, sir.

715 Q. There it is received by your line and comes to St. Louis?

A. No, sir, goes to Kansas City.

Q. What is the route to Kansas City from Buffalo?

A. Via Hannibal.

Q. Then that Lackawanna daily car of L. C. L. stuff having origin in New York City is loaded by the Lackawanna and consequently the amount that they put in the car you cannot control because it is loaded by these people, that is the fact isn't it?

A. We give them a maximum you understand on which we will haul the car. We do not control the amount above that.

Q. You can refuse to receive the car if you want to but the loading is in the hands of the Lackawanna?

A. Yes, sir.

Q. If they choose to load with the minimum of 10,000 you receive it?

A. Yes, sir.

Q. And pass it on?

A. Yes, sir.

Q. The goods that are in that car do you know what class the great majority of them belong to?

A. No, I cannot say exactly.

Q. I will ask you if you know approximately that it is true that a very large proportion of those loads, those L. C. L. loads that we have just been speaking of is *is* high grade stuff traveling under first class, a large part of it?

A. Yes.

716 Q. What is the average capacity of the box cars that run over your line from east to west?

A. The average will be about 50,000 pounds.

Q. Of course there are some that are extra large and some exceptionally small. Do you think that that is the average of their capacity?

A. Yes.

Q. Is it or is it not true that there are numbers of kinds of commodities that will load to the cubical capacity of a car without reaching its ton capacity, boots and shoes for instance.

A. Yes.

Q. You fill that up with them and you wouldn't have 50,000 pounds would you?

A. No, sir.

Q. Do you know what proportion of the cars that averaged something better than 10,000 pounds originate in New York City coming to you via the Lackawanna and going through Hannibal to Kansas City are loaded with stuff that fills the cubical capacity without filling the ton capacity?

A. I could not answer that off-hand.

Q. It is true of shipments generally of high grade first class goods, such as boots and shoes and certain grades of dry goods, notions and things of that sort that the weight is such that you could fill the car completely so far as its cubical contents were concerned and not have its weight maximum weight?

A. That is true of boots and shoes especially but those do not originate in New York. They originate in Boston.

Q. You do not mean to say that there are not any through shipments of boots and shoes from New York?

A. Not in such quantities.

Q. You would not say for a minute that a lot of those boot and shoe men in New York do not send a lot of boots and shoes west?

A. No, but they do not send them in car load quantities.

Q. You have been talking altogether in this one car about L. C. L. stuff gathered up in New York and put in a car and sealed and the car is filled to a capacity that you will accept and to an amount sufficient in quantity to satisfy the Lackawanna, and then there are a number of shipments in there to different people are there not?

A. Yes, sir.

Q. All of which is destined to some customer in Kansas City or a number of customers in Kansas City?

A. Yes, sir.

Q. Do you know what number of cars go daily from Buffalo via Hannibal to St. Joseph on your road, freight carrying class rates?

A. No, I do not know because St. Joe is not on our line.

Q. How about that which is destined for Omaha? You reach Omaha?

A. Yes, sir.

Q. Do you know anything about the number of cars that go from Buffalo via Hannibal to Omaha carrying class stuff daily.

A. No, but there are very few of them carrying class stuff, what we call the first four classes.

Q. They, whatever the number is, go to Omaha via Hannibal rather than via St. Louis do they not?

A. That would be considered car loads?

Mr. Atwood: Yes.

The Witness: Yes, sir.

Q. Assuming that the car was filled with L. C. L. shipments all which were destined for Omaha, they would go via Hannibal wouldn't they?

A. No, sir.

Q. I want to be sure that you understand what I mean. There is no occasion of breaking bulk. When you receive the car at Buffalo all the goods in it are destined to Omaha, that there are perhaps a dozen different persons who will receive them, so that there is no occasion for breaking bulk or opening the car from the time you receive it until it arrives in Omaha would it go via Hannibal or via St. Louis?

A. St. Louis.

Q. What would be the reason for that?

A. Because as I stated before the amount of L. C. L. business the tonnage of the L. C. L. business for Missouri River points from the seaboard will not justify running through cars, and we are not loading in through cars from the seaboard to the Missouri River.

719 Q. You can conceive of such a car as I have described being filled to its minimum load, having half a dozen L. C. L. shipments all of which are destined to Omaha and received by you at Buffalo. Do you mean to say that you do not have a train that would run from Buffalo that does not go down through St. Louis to which you could attach such a car?

A. Yes, we have such a train.

Q. Why wouldn't you if it is destined for Omaha attach it to that train that went by way of Hannibal to Omaha?

A. Because on that class of traffic we have no through cars.

Q. Just indulge in a hypothesis. I understood you to say that you grasp the idea that there might be a car received by you at Buffalo destined for Omaha that was filled with L. C. L. shipments. Can you understand such an idea as occurring, as a thing that might transpire?

A. I suppose such a case might happen.

Q. Let us consider just that. If that was so would you still send that car by way of St. Louis when you admit that you have a train that runs right straight through Hannibal to Omaha?

A. If we had such a car it would go via Hannibal.

Q. My understanding of it is that the Wabash business of L. C. L. shipments of class goods originating in trunk line territory is so small that it would not amount to a car a day to Omaha?

720 A. Yes, sir, from the various lines that we receive from.

Q. You know what trunk line territory is?

A. Yes, sir.

Q. You say there is not gathered up destined for Omaha as much as one car load a day that is received at Buffalo for disposition on towards Omaha?

A. There is not ever any one individual line, no.

Q. I am not talking about any one individual line. You know I did not say anything about an individual line. I asked you if you did not in all the trunk line territory and then I asked you whether in all that territory there was not gathered and concen-

trated at Buffalo enough L. C. L. class stuff destined for Omaha to make a car load a day?

A. There may be from all lines.

Q. How about Detroit. Is that directly between Hannibal and Buffalo?

A. Yes, sir.

Q. That is a division point?

A. No, it is not a division point, it is a terminal point.

Q. It is not a terminus but a terminal point?

A. Yes.

Q. Buffalo is the eastern terminus?

A. Yes, sir.

Q. What is our western terminus?

A. Kansas City.

Q. And Omaha?

A. And Omaha.

Q. At Detroit being a terminal point, trains are made up aren't they?

A. Yes, sir.

721 Q. Is there concentrated in Detroit L. C. L. stuff destined for Omaha in quantities sufficient daily to load a car?

A. Not for Omaha, no, sir.

Q. For Kansas City?

A. Yes, sir.

Q. How does the Kansas City L. C. L. shipment go, a car filled with L. C. L. stuff class goods that you receive at Detroit and destined for Kansas City, what is the route that it would pursue, Hannibal or St. Louis?

A. That car would go via Hannibal.

Q. In other words whenever it is possible to do so, in other words when the volume of business warrants and justifies it the ordinary course of good railroading for the Wabash handling stuff from Buffalo or Detroit and destined for the Missouri River is to send it through Hannibal and not through St. Louis?

A. Yes.

Q. Can you tell us what proportion of the cars handled from Buffalo or Detroit or both and destined for the Missouri River carry stuff traveling under class rates and what proportion travel under commodity?

A. No, sir, I cannot answer that.

Q. Is it or is it not a fact as you understand it, and of course you can only speak from your general knowledge I presume, that the Atlantic seaboard stuff destined for the Missouri River traveling as it does a great many hundred miles is the class of stuff that is high grade, high priced and can afford to pay the proportionate rate that class rates exact rather than coal and salt and those things that the dimensions and the tonnage of makes it impossible to travel very far?

722 A. I am not able to testify as to rates, that is a traffic matter.

Q. I was not talking about the rates. I am simply talking about the quantity of stuff and kind of stuff?

A. You mention a rate.

Q. I was simply speaking of the stuff that would be carried. You know about the class of stuff that is handled under commodity rates. We all know that bulky stuff coal and salt and zinc and those things are never carried very many miles in the nature of things. The freight would eat them up. Having that in mind I call your attention to the question as to whether or not the seaboard or trunk line territory stuff is not very largely class stuff if not wholly so and of the class stuff a great proportion of it is first and second?

A. Yes, I would say so from what knowledge I have of it.

Q. You said Omaha was one of your termini, your northern western terminus. Do you handle L. C. L. stuff that is destined for points beyond the Missouri River, beyond Omaha that might be conveyed to ultimate destination say by the Union Pacific or the Burlington west?

723 A. Yes.

Q. Now then is it a fact that sometimes there are shipments that you have to transport having as their origin some point east of Buffalo destined for Omaha, whereby a car would be filled with L. C. L. stuff part of which would be destined for Omaha and part beyond Omaha? That is quite possible as a freight possibility isn't it?

A. It is possible but we have no records of any such cars.

Q. Do I understand that this could not and would not transpire in the ordinary course of your railroading, stuff collected containing shipments, L. C. L. of course, destined some for Omaha and some for points beyond Omaha and a car would be received by you and with unbroken bulk taken to Omaha where bulk would be broken the Omaha merchants receiving their shipments and the Union Pacific perhaps receiving some for shipment further on?

A. We have those shipments but they are loaded on St. Louis and Chicago.

Q. When you use the expression loaded on St. Louis do you mean it is loaded with the idea of its being redistributed at Chicago and St. Louis?

A. Yes, sir.

Q. Is it or is it not a fact that at Omaha you have the facilities whereby you could do the trans-shipping that would send these goods by the Union Pacific on beyond the Missouri River?

A. Yes, sir.

724 Q. Now we will assume that we have such a shipment in Maine and it was loaded on St. Louis, there are some shipments destined for St. Louis in the car and some we will say destined for Fremont, Nebraska and bulk would be broken at St. Louis?

A. Yes, sir.

Q. The St. Louis shipment would remain there and the Fremont shipments would be loaded in another car to go to Omaha, and further than that on your line they could not go, would they be carried, L. C. L., that is, would they be carried in a car destined for Fremont or in a car destined for Omaha?

A. That freight would be loaded in what we call our Union

Pacific transfer car and bulk would be broken there. That is practically Council Bluffs. There that freight would be redistributed by the Union Pacific in the local cars.

Q. Bear in mind this shipment after you have got rid of your St. Louis shipment is less than a car load lot. What would you put these two or three L. C. L. shipments destined for Freemont into, a car that would contain no other shipments than those?

A. No, sir.

Q. Or another car of yours into which would be put different stuff destined for Council Bluffs or Omaha?

A. Yes, the operation would be this, that that car would be placed at our in bound freight house, it would be unloaded and St. Louis shipments would remain on our in bound platform and Freemont shipments would be trucked around from our in to our out bound house into our Union Pacific transfer car and consolidated there with shipments received at St. Louis and forwarded to Union Pacific Transfer at Council Bluffs.

Q. Where again bulk is broken and the redistribution transpires?

A. Yes.

Q. Do you have at Council Bluffs facilities for making such transshipments as we have been describing?

A. I could not say as to that.

Q. Does your road touch Council Bluffs on its way to Omaha?

A. Yes, sir.

Q. You said a little time since, however that at Omaha you did have the facilities for transshipment?

A. Council Bluffs and Omaha. We have got a drayage arrangement I understand.

Q. State what would prevent if you chose to do so, since you have the transfer and transshipment facilities at Council Bluffs and Omaha, what would prevent you, in conveying the Freemont shipments from Buffalo via Hannibal to Council Bluffs or Omaha or both and there have them transshipped to the Union Pacific?

A. In the first place I have explained the delay. There would be a delay in re-transferring this freight at Buffalo where we have direct connections.

Q. You keep confounding a condition that you think exists with one that I present as a hypothesis. Bear in mind we have been considering a car that was loaded to its minimum or past its minimum with L. C. L. shipments all of which were destined to either Omaha or Freemont, I ask what is there that would prevent the car being conveyed directly via Hannibal to Omaha and there broken and redistributed?

A. With time no factor there would be no reason why it could not be done.

Q. You would have sufficient time wouldn't you if you carried it by way of Hannibal and you did not break bulk between Buffalo and Omaha?

A. No we would not.

Q. You do not catch my idea?

A. I catch your idea fully. Less time would be consumed in

taking that shipment to St. Louis where we have got our freight train schedule so arranged as to provide for this proposition than at Buffalo where we have to make direct connections with the Lackawanna line.

Q. You are inserting a lot of factors into the hypothesis that is not in it at all. I am assuming here is a car received by you at Buffalo which is filled so it does not have to be broken in order to put other stuff in to make a sufficient load to warrant carriage, namely a minimum load and that we will say is 12000 pounds, and is composed of five L. C. L. shipments, three of which are destined for three people in Freemont and two of which are destined for two people in Omaha; you haven't got to break bulk or do a thing to that until you get to Omaha have you?

A. No.

727 & 728 Q. What would there be to prevent you, since you have daily trains via Hannibal to Omaha, from hitching that right to the Omaha train and running it right straight through?

A. There would be no physical difficulty in it at all.

Q. Supposing the volume of the business warranted it that would be the ordinary and usual method of handling such goods wouldn't it?

A. Yes, sir.

Adjourned to Tuesday, February 16, 1909 to meet at Chicago, Illinois at 11 o'clock A. M.

729 On February 16th, 1909 at 11 o'clock A. M. the parties met pursuant to adjournment at the office of Colin C. H. Fyffe, Esq., in the New York Life Building in the City of Chicago and State of Illinois.

ARTHUR HAWXHURST, a witness produced on behalf of the complainants was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. Give your full name?

A. Arthur Hawxhurst.

Q. Where do you reside?

A. Evanston.

Q. Are you connected with Marshall Field & Company?

A. Yes sir.

Q. In Chicago?

A. Yes, sir.

Q. How long have you been connected with that company?

A. Thirty-eight years.

Q. Continuously last past?

A. Yes, sir, with the exception of about six weeks in 1881.

Q. Your experience with them has been in various departments?

A. More or less yes, sir. My department comes in contact with the other departments.

Q. You are familiar with the method of business and the conditions attending the same here in Chicago?

A. Yes, sir.

730 Q. What is the line of business carried on by Marshall Field & Company?

A. Wholesale Dry Goods and carpets chiefly. We do other business along the same lines.

Q. Where is your main and principal competition for the business west of the Missouri River?

A. Everybody that sells those goods are competitors of ours but our chief competition I should say was in New York city.

Q. You sell to the jobbers on the Missouri River or to the retailers there and beyond?

A. We sell principally to the retailers there and beyond. We sell some goods to the jobbers but they are a class of goods that we handle personally, special goods that they cannot get anywhere else.

Q. In selling to the retailers on and west of the Missouri River you meet with competition from the Missouri River jobbers?

A. Yes some.

Q. You may state whether the order of the Commission in controversy in this case, if enforced, compelling the railroads to haul between the Mississippi and the Missouri Rivers articles taking first class rate for 9 cents a hundred cheaper when the articles are shipped from the Atlantic seaboard than when they are shipped from Chicago, would have an effect upon your business?

A. It would have a detrimental effect on it.

Q. Why?

731 A. Because in the first place it is nine cents added to seven cents which is already in existence against us and that is 16 cents; and then in addition to that it would be the moral effect.

Q. What do you mean by the moral effect?

A. The effect that it has on the buyer's mind. For instance if a buyer on the Missouri River or beyond can purchase his goods in New York for 16 cents less freight rate than he can in Chicago he buys them naturally in New York, that is where he naturally would go for that product.

Q. Would that moral effect exist even though you absorbed the difference?

A. Yes sir, the moral effect would exist, and the profit would come out of us, that is the loss of profit would come out of our pockets, and that is small enough now I can assure you.

Q. You speak of the 7 cents which existed. Explain what that is and what you meant by that.

A. That is the difference between the rate from St. Louis and Chicago. There is a difference of 7 cents between the two cities to Kansas City or Omaha.

Q. That is the local rate from St. Louis to the Missouri River cities is on first class 7 cents lower than the local rate from Chicago to the Missouri River cities?

A. Yes, sir, and we have been protesting against that for years as unjust.

732 Q. You have labored under that disadvantage?

A. We have yes, sir.

Q. That has been a disadvantage?

A. Certainly.

Q. That is what you referred to, and this order would add to that disadvantage a 9 cent disadvantage as compared with the seaboard shipper or the Missouri River shipper?

A. Yes, sir.

Q. What do you say as to whether the advantage to the seaboard shipper and the Missouri River shipper that would result from the enforcement of this order would have a tendency to affect the inauguration of new business here or whether it would be an inducement to a person starting in to start in at the seaboard or the Missouri River where he would get the advantage?

A. He would naturally in my judgment start in at the seaboard.

Cross-examination.

By Mr. WALTER:

Q. What department of Marshall Field's business are you in?

A. I am one of the managers there but my chief business is looking after insurance and indemnity features of the house.

Q. You are not particularly acquainted with the rate situation?

A. Not particularly with the railroad rate situation.

733 Q. They have men whose particular business it is to look after that haven't they?

A. Yes, sir, we have several men, but we all have different parts.

Q. You are their insurance expert?

A. Chiefly, yes, sir. My department comes in contact with other departments of the house.

Q. That is no more true however of your business than of other people's business, that a man who is employed by the concern in any responsible position more or less knows about the other parts of the business?

A. Possibly. He may or may not.

Q. You do not undertake to say that you have special advantages for knowing what is going on in the traffic world?

A. Not especially no, sir.

Q. Your chief competitors you say are at New York?

A. Yes, sir, that would be the chief place.

Q. You do however have very strong competition at St. Louis?

A. We have some, yes, sir.

Q. At Chicago?

A. We have some here, yes, sir.

Q. Those competitors are affected in the same identical way, no more and no less, by this order, than yourself?

A. I cannot answer how it affects other people. I can only answer how it affects us.

Q. You understand that this order applies on all alike?

A. Yes, sir.

734 Q. And that the dry goods jobbers here and at all other points save at the seaboard are borne upon alike equally?

A. Yes.

Q. You say that you sell to both jobbers and retailers at the Missouri River?

A. We sell as I said to the retailer and we do sell to the jobber on several things that we control ourselves. Take as an illustration if you like Alexandre kid gloves, we are the United States agent for them.

Q. Don't you sell dry goods to the jobbers at the Missouri River?

A. Not very much.

Q. You do sell to them?

A. There may be a few cases where they cannot get them elsewhere. For instance we manufacture laces at Zion City and if they want those they have to come to us to get them.

Q. In other words you make prices on dry goods muslins and things of that sort in competition with dealers the world over?

A. Yes I think likely.

Q. Your market extends wherever these goods go in the world?

A. Yes sir.

Q. You sell right in the east, New York City and New England states?

A. We do yes sir but you must bear in mind that what we sell in New York city and in the New England states is stuff that we import from Europe and stop in New York. We do not sell from Chicago to the New England states.

735 A. No sir I never heard of their doing so.

Q. Have they store houses in the east?

A. We have a buying house and a branch store for selling kid gloves that we import direct from Europe and stop at New York.

Q. Isn't it true that the great bulk of your business is bought in the east?

A. Well I cannot answer that. A portion is bought in the east, a portion in Europe, a portion in Canada, and portions we manufacture ourselves, and things of that sort.

Q. As a matter of fact a great proportion of that which you have to sell is shipped to you from the east if you have it at Chicago?

A. A great proportion comes from the east, either from Europe or bought there in the east.

Q. You are well acquainted with the principle of transportation that the longer the haul unbroken the cheaper the rate per ton mile?

A. I am not well acquainted with that feature. I do not make a study of it.

Q. You understand it is true generally, that the longer the haul the less the rate per ton per mile as the haul increases?

A. I do not understand it that way. That seems to me to be more like the old Standard Oil principle, that the more you haul the less rate you should get.

Q. You understand that is true don't you in transportation?

736 A. No I do not. The way I understand it—I do not profess to be a practical traffic man—the rates are made from New York City to the Mississippi River and they break there and then they add on the locals. That makes the through haul.

Q. That gives the highest possible rate to the carriers immediately between the rivers doesn't it?

A. It may or may not. If it does it gives them that rate on the fact that the whole country has been built up on that class of rating. It is not an exceptional case at all.

Q. Aside from the Mississippi River as a breaking point will you give me any other illustration?

The WITNESS: How do you mean?

Mr. WALTER: With rates up to the Mississippi River plus the legal rates beyond, you say all business of this country is built up on that principle?

A. The rate to Chicago is 75 cents. The rate from Chicago to Kansas City is 80 cents. That makes \$1.55.

Q. Do you mean to tell me that goods shipped from New York to Kansas City take a rate of 75 and 80 cents?

A. That is the way I understand it yes.

Q. Don't you understand that the rate to Kansas City is 87 cents or 88 cents to the Mississippi river and 60 cents beyond?

737 A. That is the very condition that I am complaining of. St. Louis gets the rate 88 cents and from St. Louis to Kansas City 60. That is \$1.48 and ours is \$1.55. That is the point that I make that it is unjust.

Q. To come back to the exact question I was asking you, you say that the Mississippi River is a breaking point, a basing point?

A. That is what the railroads use as a breaking point.

Q. And you say that all business of this country has been built up on that system?

A. That is the way I understand it.

Q. You are aware that that applies to through business. Where else in this country do you have that same system applied to through business?

A. I cannot answer that for I do not make a special study of these things.

Q. Then you do not know that this country's business has been built up on the system that is employed between the rivers?

A. I only know from this, that Mr. Barlow who is Traffic Manager of our Association and whenever we want any information about railroads we go to him, tells me that is the fact.

Q. In Chicago of all men acquainted with the system Mr. Barlow knows more about it than any other jobber, isn't that the truth?

A. I cannot answer that.

738 Q. You go to Mr. Barlow whenever you want to get information?

A. I do personally for he is our traffic manager for that kind of business.

Q. And for all of these other big shippers?

A. That is what they have him for.

Q. You say this order would have a detrimental effect?

A. It would on our business.

Q. What is the measure of that effect?

A. Sixteen cents a hundred pounds.

Q. You say that the Commission's order has that effect of penalizing you 16 cents on a hundred pounds?

A. On Kansas City business and beyond.

Q. You well know that the highest reduction the Commission put in was 9 cents.

A. I said that we already had 7 cents against us.

Q. This order does not have anything to do with that 7 cents?

A. As I understand this particular case it is not a question of how much they shall take away from us but whether they shall take anything more away from us.

Q. Do you understand if this order is held invalid that your rate will be equalized to the extent of 7 cents?

A. Certainly, it will be equalized that we will still have a differential of 7 cents.

Q. Do you understand if the Commission's rate is held invalid, that reduction of 9 cents, that you will still further get a reduction of 7 cents on your Kansas City and beyond business?

739 A. No I do not understand that.

Q. Have you heard any intimation that if the Commission's order is stayed and held invalid the carriers will give you that through rate of \$1.48?

A. I have not heard anything of that kind.

Q. Then as a matter of fact the only disadvantage that you could possibly suffer under this order on first class goods would be 9 cents?

A. I won't acknowledge that, for this reason, that we are already fighting that 7 cent case. We have already put in our intervening bill that that is unjust. That has stood against us for 25 or 30 years.

Q. Where have you made that complaint?

A. Here it is right here (referring to argument of Mr. Barlow hereafter noted as introduced in evidence as Exhibit D.)

Q. Before whom?

A. That was the protest of our Association for the 7 cents. We already have a differential of 7 cents against us. Now you are going to load 9 cents more onto us and that makes 16 cents.

Q. You are well aware of the fact that this order has nothing to do with the 7 cents which you are talking about?

A. I understand that but you cannot take one without taking both.

740 Q. Your contention is this, that you are already paying an unreasonable rate?

A. For which we are protesting.

Q. That protest was before the Commission and it was not acceded to at all.

A. I do not know whether it has been or not.

Q. You are not aware of any reduction of the rate into Chicago plus the rate out from Chicago to Kansas City which would be the same as the through rate from New York to Kansas City?

A. No that has not been consummated yet as I understand but that does not alter the fact that we are fighting it just the same.

Q. The 7 cents disadvantage as you contend is predicated upon the theory that your goods shipped in here to Chicago, unloaded, put into your warehouse again, hauled to the depot and put into the railroad's cars and hauled out should take the same rate as if the goods had been hauled straight through without any stoppage at all at Chicago or any competition with goods which went over the Wabash for instance by way of Hannibal and that never touched Chicago?

The WITNESS: Why not?

Mr. WALTER: That is your contention.

A. Certainly why shouldn't it. It does not cost the railroads anything to handle these goods. We are doing the handling ourselves.

Q. You want to be understood as saying that it costs no
741 more to the railroads to handle this through business than to handle the business into Chicago and out again?

A. That is the way I understand it.

Q. In other words as a trade question you want every advantage you can get?

A. Sure.

Q. This 7 cents disadvantage that you talk about is wholly due to the fact that your rate in to Chicago plus the local rate on goods shipped from Chicago to Kansas City is 7 cents higher than the through business New York to Kansas City?

A. Apparently.

Q. Your business is fairly profitable isn't it?

A. The only way I can answer that is what Mr. Field told me. He says there is no money in the business.

Q. That is all you know about it?

A. That is all I know about it.

Q. What were the profits last year?

A. Mr. Shedd told me that there were none.

Q. Do you want to say here that that is your understanding?

A. That is the way I understand the English language. I asked him the question, I asked for a raise and he said there are no profits and I can't give it to you.

Q. When you wanted an increase he said business was not profitable so he could pay you any more?

A. We had a sort of heart to heart talk on this question and he said there was no money in the business that they lost money
742 last year.

Q. Did he say that was lost on goods competing in the Missouri River market?

A. No, sir we did not go into that question.

Q. You do not know how much freight you ship that would be affected by this 9 cent rate do you?

A. I could guess at it.

Q. That is all you have been doing about all this business isn't it?

A. You can take that as you like.

Q. It is simply your judgment?

A. I cannot give anything more than my best judgment and knowledge.

Q. You haven't any figures or data upon which you can base your opinion?

A. Yes I take the figures that there are 7 cents against us now and 9 cents more to come. That is 16 cents on a hundred pounds against us on all the goods we sell to Kansas City and beyond.

Q. You cannot tell me how much business you do which would be in competition with the goods shipped under this reduced rate?

A. You mean I cannot tell you how much business we do west of the Missouri River?

Q. That you do in the territory where this 9 cent reduction would apply?

A. No because that reduction will touch every other rate in that territory.

Q. Don't you know as a matter of fact that the goods shipped from Chicago into the southwestern territory pay less rate on the
743 hundred pounds than goods from other points competing?

A. I cannot answer that question.

Q. You do not know anything about rates at all do you?

A. You must judge of that from what I have told you.

Q. To get down to the real result of your knowledge isn't it this that simply because your competitor as you say gets a reduction of 9 cents that you are put to that additional disadvantage in competing with him in the market where he does business and where you want also to do business?

A. It is our market and we should have the same privilege that he has shouldn't we?

(Question repeated.)

A. We are put to the additional disadvantage of 9 cents in this particular case and in addition to that we are put to the moral disadvantage of that man in Kansas City being able to buy in another market besides ours better and at a lower rate than he can with us. If our seller goes to Kansas City and the seller from New York goes to Kansas City this man says it is 9 cents less freight for you if you buy from us and we consider that a great moral disadvantage.

Q. When the merchant says what is the rate from Chicago on dry goods to Kansas City and the answer is the rate is 80 cents and the New York man says it is \$1.47 the moral advantage is in your favor altogether isn't it?

A. Not at all. Doesn't that man understand that we have
744 already paid 75 cents and that has got to be added on?

Q. Have you sold goods to the retail trade?

The WITNESS: Where?

Mr. WALTER: In Missouri or any place where they have to pay the freight rate. Don't you know they look at the freight rate they have to pay?

A. I don't know how they look at it. I know the effect it has on us.

Q. I will ask you if your selling price on dry goods is not made without any reference to the freight rate of the New York competitor?

A. I don't know whether it is or not. It may be on certain classes of goods such as cottons. That is not by any means the chief part of our business.

Q. Will you tell me what your chief business is?

A. Wholesale dry goods and retail dry goods and carpets.

Q. Do cottons form a large bulk of your business?

A. I don't know that they do.

Q. Do you know what proportion?

A. I cannot tell you.

Q. Marshall Field is a man who knows in detail the figures of his business, what proportion of his business would be affected by this 9 cent order?

A. I do not know as he does.

Q. Don't you have anybody that knows more about it than you do?

A. I would not say that. The house is divided into distinct departments, sixty-one departments in the wholesale and possibly one hundred and fifty in the retail. Now the question is which one do you want to find out, cotton goods woolen goods or silks or other classes.

Q. You are in the insurance department?

A. Yes.

Q. What do you do in the insurance department?

A. Look after the insurance.

Q. That is your business?

A. That is chiefly my business.

Q. What other business do you have?

A. I have a great many things that come up that I touch and look after.

Q. Tell me something you touch and look after besides insurance?

A. I look after this freight business.

Q. Is that the rate business you are talking about?

A. This freight rate business or any other question that comes up and needs careful handling and careful looking after.

Q. Haven't they got a traffic manager?

A. We have three.

Q. You are not a traffic manager?

A. Not at all.

Q. These three men look after all the traffic business of Marshall Field & Company?

A. Under the supervision of others. I am one of them.

Q. Tell me how much supervision you have over these three traffic men?

A. I have had to take up the Lake and Rail case and the Southeastern case. There is another detriment.

Q. In what way?

A. They can ship goods to Chattanooga cheaper than we can.

Q. You do not consider the reasonableness of the rate but you consider it solely from the viewpoint as to whether somebody else can ship goods as cheap as you can?

A. I consider it from a merchant's standpoint.

Q. What else do you do in the traffic business?

A. I cannot answer that. Something may come up tomorrow or may not come up for a week. I do not handle the details of the traffic business.

Q. They have men specially employed for that purpose haven't they?

A. Yes.

Q. Men who have the facts at their fingers' end?

A. I do not know whether they have or not.

Q. They know the rates?

A. They know some rates, rates we are interested in more or less.

Q. All the business that you have had outside of the insurance department is this case, the Rail and River case and the Southeastern case?

A. I have had the eastern business from our lake and rail for years. I used to be Mr. Field's Secretary and used to come in touch with a great many of these things.

Q. All you mean by that is that you hear about these things?

A. I hear about them and I study them up to see whether
747 we are interested or not.

Q. The men who look after Mr. Field's interests are these three traffic men?

A. Not necessarily altogether.

Q. Isn't that what they are paid for?

A. They are paid to look after the detail of it. I do not profess to be an encyclopedia of all the knowledge of our house. You understand that.

Q. You say that if a man was going to start business this rate would be a very great advantage?

The WITNESS: This eastern rate?

Mr. WALTER: This 9 cent reduction would cause a man to locate his business either at Kansas City or in the seaboard territory?

A. I did not say it in those words. I will put it in another way. I will say this, that a man that lives at Kansas City or is going to do business at Kansas City can land his goods cheaper in the city of Kansas City if he buys them in New York than if he buys them in Chicago.

Q. I understood you to say if a man was going to start in business—

A. In Kansas City or Omaha.

Q. If he wanted to sell goods as a wholesale dry goods man he would locate his business either in New York or seaboard territory or in the Missouri River valley?

A. He would have that advantage.

748 Q. Didn't you say it would result in the man locating his business there?

A. No, I did not say anything of the kind.

Q. Is that true or not?

A. That is true so far as I am concerned.

Q. There is no danger under this order of any competitor of yours locating here in Chicago?

A. I do not know. I cannot answer that question.

Q. That would be the natural result of what you have just said wouldn't it?

A. Every one would have to decide that for himself for this reason that if he did locate here he would have to make up his mind to do as we do and lose some of his profits by equalizing these rates.

Q. Is not that the only thing there is in this case, that you get a little less profit to the extent of 9 cents on the hundred pounds on first class goods and three or two cents on the fifth class than under the present arrangement?

A. Yes, but if it is a fact that we make no money on what we get now how much less will we make when some more is taken away from us?

Q. Nobody has yet shown that you make no money.

A. No.

748½ Cross-examination.

By Mr. WEBSTER:

Q. How long have you been doing business in Chicago, the house that you represent?

A. Since 1865?

Q. How long has this 7 cent disadvantage to you and in favor of St. Louis been in existence?

A. Something in the neighborhood of twenty-five years as I understand it.

Q. Who established that rate that gave St. Louis the advantage the railroads or the commercial people in Chicago?

A. The railroads I should think.

Q. You mean to say do you that the railroads themselves have been guilty of working an injustice against you for for twenty-five years to the extent of 7 cents?

A. We are in the hole 7 cents, yes, sir.

Q. Ever since you have had an Interstate Commerce Commission you have never filed a complaint before the Interstate Commerce Commission to have the rate changed have you?

A. Yes sir there is one right there (referring to the Exhibit D being the argument of Mr. Barlow.)

Q. I beg your pardon that is not a complaint. I asked you if you ever filed a complaint?

A. I don't know what we have done outside of that no, sir.

Q. Isn't it a fact that you never did file a complaint before the Interstate Commerce Commission against the railroads to change that rate?

A. I don't know.

Q. The paper that you refer to is an argument made by Mr. Barlow is it not and nothing more or less than a printed argument?

A. Representing these merchants yes sir.

Q. That was made in a case then pending before the Interstate Commerce Commission in which Burnham-Hanna, Munger Dry Goods Company and other jobbers of the Missouri River were complainants.

A. That is the way I understand it.

Q. Yet you Chicago merchants having the opportunity to file a complaint in that case if you wanted to did not choose to do so?

A. They did file it as I understand it, they intervened in it.

Q. You did not intervene did you?

A. That is what it says here, argument in support of the intervening petition of the Chicago Association of Commerce.

Q. Don't that say argument?

The WITNESS: Isn't that intervening?

Mr. WEBSTER: No it is not.

The WITNESS: I do not profess to be a lawyer.

Q. I ask you again now whether during all these twenty-five years when you had an opportunity to file a complaint you ever did file a complaint against what you call the wrong committed by the railway companies against you?

A. I don't know.

750 Q. Yet you pretend to be experienced and are sent here to represent Marshall Field & Company to complain against the rates?

A. Against the rates that are put against us yes sir.

Q. So that Marshall Field & Company for twenty-five years never having filed a complaint against these roads on this occasion see fit to send an insurance man here to testify in this case?

A. I will say I do not know whether they have filed a complaint. I don't know whether they have or not. They may have filed a good many of them.

Q. If they ever did file one you do not know it?

A. No, sir.

Q. You did not ask Mr. Barlow whether he had ever filed a complaint did you?

A. No, sir.

Q. You did not ask Mr. Field whether he had ever filed a complaint did you?

A. He is beyond our getting at him. He is dead.

Q. You have got a Mr. Field who still speaks for your house have you not who lives in England?

A. Yes sir we have one that lives in England.

Q. You have somebody here in Chicago that speaks for your house have you not?

A. Yes, sir.

Q. Did you ever ask him whether a complaint had been filed or not?

A. No, sir.

Q. Who sent you here?

751 A. I came here representing our house.

Q. Who told you to come here to represent your house?

A. Our people.

Q. Who? Our people may have a great many. I want to know who asked you to come here?

A. Mr. Simpson asked me.

Q. What position does he hold in your house?

A. Second vice president.

Q. Then Mr. Simpson would know the facts about which we are asking questions today would he not?

A. Not necessarily no sir. He is a young man. He is thirty-three and I am fifty-six. I have been there thirty-eight years and he has been there comparatively speaking but a few years.

Q. You evade my question. I did not ask about necessarily. I asked you if he would?

A. I do not know what Mr. Simpson knows.

Q. At whose instance did Mr. Simpson think it was necessary to send you here today?

A. I don't know what Mr. Simpson's instance was. He merely said that the case was against us and to our detriment and for me to take it up.

Q. Do you know whether or not the representatives of the railroads who are parties to this suit had not importuned Mr. Simpson or somebody else representing your house that you should come here?

A. I do not know what occurred as between the railroads and Mr. Simpson.

752 Q. Will you say or do you know that you are not here today at the instance of the railroads to help them pull their chestnuts out of the fire?

A. I am here at the instance of Marshall Field & Company to defend them against this reduction of 9 cents.

Q. You said a moment ago that you were here only because Mr. Simpson told you to come and you said you did not know who was back of this inspiration to send an insurance man here?

A. I have told you I took up this special case. I took up the Southeastern case and I took up the Lake and Rail case, and the Interstate Commerce Commission beat us on that. I have taken up this case because it is a study and I take these things and study them.

Q. When this case was on hearing before the Interstate Commerce Commission you did not appear to testify in behalf of Marshall Field & Company did you?

A. No sir.

Q. Did you know at that time that this rate question was then under investigation on a hearing then pending before the Interstate Commerce Commission?

A. No, sir.

Q. You did not know that?

A. No.

Q. Did you know at that time that Mr. Barlow appeared before the Interstate Commerce Commission in the City of Chicago and testified as a witness in Chicago?

753 A. I did not take the case up at that time.

Q. Did you know that fact?

A. No, sir.

Q. Did you know the fact that this branch of the argument had been made by Mr. Barlow at that time?

A. Not at that time no sir.

Q. Who gave that printed argument to you?

A. Mr. Barlow.

Q. When?

A. Within the last two weeks.

Q. Did he go to you and ask you to come here and prepare yourself to testify?

A. No, sir. I went to him and asked him what facts he could help me on and he gave me that and said There is my argument, it will help you that much.

Q. At whose suggestion did you go to Mr. Barlow?

A. At my own.

Q. That was after Mr. Simpson had talked to you?

A. Yes, sir.

Q. When was it that Mr. Simpson told you to look up this matter?

A. Two or three weeks ago.

Q. It was after the railroads had begun the taking of testimony in this suit was it not?

A. I don't know.

Q. Then it was since the 27th day of January?

A. It was before that time.

Q. You want to change now do you the time when it was?

A. Not at all. I said two or three weeks ago.

Q. How do you know it was before the 27th?

754 A. I will tell you one of the reasons right here. There is an article I cut out of a paper on the 28th of January (handing counsel a newspaper clipping). I was interested in it before that time. There is an article from the Tribune, I think it is. I have had it in my hands for some time but it has not come up so I have not given it very much attention.

Q. This was after this suit had been brought by the railway companies in the city of Chicago and after the railway companies of Chicago had obtained a temporary restraining order and after an examiner had been appointed to take the evidence?

A. That was on the 28th of January.

Q. Did not that recite the facts that I am calling your attention to?

A. I have not the facts in my mind.

Q. You said you read it.

A. I said I had this in hand before that date. That was one of the things I cut out at that time.

Q. I am trying to get a little information out of you, whether at that time you did not know that this suit had been brought by the railroad companies at their own instance and a temporary restraining order had been obtained and an examiner appointed to take the evidence and you saw it in the newspaper and cut that out and kept it?

A. Yes, I have a lot of clippings of all kinds.

Q. You read it over didn't you?

A. Yes.

Q. Then you knew the facts I have stated in my question?

A. Possibly that is right.

Q. About this 7 cent rate about which you never complained before the Interstate Commerce Commission by filing any
755 complaint to have it changed, modified or readjusted, notwithstanding all that you know the fact do you not about which you are here testifying today does not change the relative proportion of the rates between St. Louis and Chicago?

A. I have already repeated that.

Q. Therefore is it not true without any prevarication that the reduction of 9 cents between the rivers only affects you to the extent of nine cents and not 16 cents as you stated in your testimony in chief?

A. That may be true if we do not succeed in knocking out this seven cents.

Q. You are not trying to knock it out are you?

A. We are here yes.

Q. The matter has been decided to which Mr. Barlow's argument refers. You did not appeal did you from that?

A. I do not know what we did.

Q. You never asked for a re-hearing?

A. I cannot answer that.

Q. Therefore that is res adjudicata?

A. I do not understand that term.

Q. Do you represent here the retail department or the jobbing interests of Marshall Field & Company?

A. Both.

Q. Which of those branches is it that sells the goods to the retail merchants and jobbing merchants on the Missouri River?

756 A. The wholesale store.

Q. Does your wholesale store sell goods to Burnham, Hanna, Munger Dry Goods Company of Kansas City?

A. I cannot answer that.

Q. It does not so far as you know does it?

A. I will qualify that by saying it may be possible that we do sell them some particular special things, kid gloves or lace curtains or something of that kind.

Q. You may do that or you may not do that but your answer would imply that you do not sell to them dry goods and carpets generally.

A. I should say not. They buy those in New York City.

Q. Neither do you sell to Swofford Brothers Dry Goods Company?

A. Not to any extent I should judge.

Q. Nor to Smith McCord Townsend Dry Goods Company?

A. The same thing, they can get cheaper rates from New York so they buy in New York.

Q. Will you look over the list of intervenors as set forth in their petition of intervention and then answer the question as to whether the jobbing house of Marshall Field & Company sells dry goods and

carpets to any of the said jobbing houses at the Missouri River points named in that petition?

A. I cannot answer that question, as you have called me down and I am only an insurance man and do not profess to keep track of all the merchants.

757 Q. Your business with these merchants who are jobbers on the Missouri river who filed this intervention would then not in any wise be affected by the reduction of 9 cents on first class between the rivers?

The WITNESS: With these particular people?

Mr. WEBSTER: Would not at all.

A. I would not say not at all.

Q. So far as you know?

A. I would say that it amounts to 9 cents a hundred pounds upon what they do buy of us.

Q. So far as you know the reduction of rates of 9 cents on first class would not at all be detrimental to any business you have with any of these jobbers of the Missouri River who are parties to this intervening petition?

A. It might be possible.

Q. Will you please tell me any retail merchant in Kansas City St. Joe or Omaha to whom you do sell goods whereby or wherein you would be injuriously affected by this 9 cent reduction on first class? I want the name?

A. I cannot give you the name of the firm but I can say every merchant of that class down there.

Q. If you know anything about the business of your jobbing house you ought to know who you sell goods to. Do you mean to say that you come here and testify under oath that your business is going to be unjustly affected and not know who it is that
758 you sell goods to and who it is that is going to buy a less quantity of goods, and to whom it is you sell goods where your profits are going to be diminished?

A. I cannot see that that would make any difference in the question of whether our business would be depreciated. It would be depreciated to the extent of that nine cents whether it was one or more.

Q. I might be able to form an opinion whether you are injured or not if I knew whether any of these people bought any goods from you at all?

A. You might.

Q. Isn't it true that if none of these people bought goods of you you would not be injured?

A. I say merchants outside of these concerns who buy their goods in New York and get the benefit of the rate. All the others who cannot afford to go to New York are beaten unless they do go there.

Q. That is all associated with an if. I want a fact?

A. I say it is a fact. I don't say it is an if.

Q. If it is a fact please tell me the name of a merchant in either of these three cities to whom you sell goods, jobber or retailer, I want his name and the quantity of goods sold him?

A. I cannot tell you. I say any man to whom we do sell.

Q. As a matter of fact you don't know that you sell merchandise to any one of these merchants either jobbers or retailers?

759 A. Not absolutely no.

Q. Therefore you do not know that you lose five cents a year if that order of 9 cents per hundred is enforced do you?

A. I know this, that it does not make any difference whether we sell to one or the other, we lose that profit, and I know we do sell goods down there. It doesn't make any difference who we sell them to.

Q. If you say you know you sell some I want to know who you sell them to and the quantity and then I can form an opinion or the court can form one, instead of being obliged to take your conclusions.

A. I cannot tell you the names. I am not in that department and not looking after those things.

Q. Will you suggest to Mr. Simpson that he had better send somebody here who does know as to that?

A. If it is absolutely necessary that I should suggest that to Mr. Simpson I will do it if not it is uncalled for.

Q. Your rate from the Atlantic seaboard to Chicago is what?

A. 75 cents to Chicago all rail. 62 cents lake and rail.

Q. I am speaking of all rail first class?

A. Yes sir.

Q. That rate has been in existence for about how many years?

A. I should say twenty or twenty-five years.

Q. Do you know what the rate is from the Atlantic seaboard to either Pittsburg or Buffalo?

760 A. No, sir.

Q. Do you know what the rate is from either Buffalo or Pittsburg to Chicago?

A. No, sir.

Q. You do know that if goods are shipped from the Atlantic seaboard to a merchant in Pittsburg or Buffalo and reshipped by that merchant from Pittsburg or Buffalo to Chicago it is more than 75 cents?

A. I don't know that. I have already said I am not a traffic man. I am not an encyclopedia of traffic matters.

Q. That is quite manifest. Do you know then how much advantage you have enjoyed for twenty-five years over a merchant doing business in either Pittsburg or Buffalo as an illustration?

A. No, sir.

Q. Then so far as you know you in Chicago have been enjoying an advantage of more than 7 cents over the merchant in Buffalo or Pittsburg or other cities similarly situated?

A. I do not know whether it is 7 cents or 27. I cannot answer that question.

Q. Your position is this, if you have enjoyed and advantage of either 7 or 27 cents over all the intermediate territory between here and the Atlantic seaboard you want to keep it and you think it right that you should keep it do you?

Objected to by Mr. McHugh as incompetent, irrelevant and immaterial and not proper cross examination the witness having
761 already testified that he knows nothing as to whether he has an advantage or not.

A. The advantages that we have had are so small that we want to keep everything we can.

Q. Then if it happens that you have an advantage today over a great deal of territory surrounding the cities of Kansas City, St. Joe and Omaha you want to keep that also?

Objected to as before.

A. We haven't any advantage as I can see there. We have a disadvantage.

Q. That is your notion of it is it?

A. Yes, sir.

Q. I won't stop to bother you about figures and details about that, we will do that further on. If it be then that as to any of the territory anywhere west you enjoy an advantage over jobbers on the Missouri River such as at Kansas City St. Joe or Omaha, you want to retain that do you?

Objected to as before.

A. I do not know whether I can answer that kind of a question. We do not wish any unfair advantage over anybody. We do not wish anybody to have an unfair advantage over us.

Q. Then if the jobbers of Kansas City St. Joe and Omaha feel that you do have an advantage you recognize their just right to complain of this thing that they deem an advantage which Chicago has do you?

762 A. I suppose everybody has a right to complain of anything that they feel is unjust. I would have to think over that kind of a question before I would answer that. It is hardly fair to put that kind of things at me. There are a great many things that enter into a case that you cannot always answer off-hand.

Q. Who was it that said to you that during the year your jobbing house did not make any profit?

A. Mr. Shedd, the President of the concern.

Q. Do you know whether it made any profits the year before?

A. I do not no sir.

Q. You did not ask that?

A. Yes I have asked it for a good many years and I have had the same old story, no money in the business.

Q. But your house has not gone into bankruptcy by reason of not making any money has it?

A. Not yet.

Q. You know as a matter of fact it has been growing in importance and magnitude and extent of its stock and the area of its business year after year for twenty-five years and has become perhaps the most monumental dry goods house in the United States?

A. It has been going backward for the last year. It lost six million dollars last year in sales alone in the wholesale business.

Q. Was that by reason of any reduction in the rates between the Mississippi and the Missouri rivers?

A. It may have had some effect.

Q. Is it a fact that there has been no reduction in the rates between the two rivers for twenty-five years?

A. I cannot answer that.

Q. Why did you say it may have when you come here to testify as to rates when as a matter of fact the rates on your dry goods have not been reduced in the period of twenty-five years between the two rivers?

A. You lose sight of the fact that we have been against the differential.

Q. That has existed for twenty-five years?

A. It has been about twenty-five years that I have heard there was no money in the business.

Q. Do you want it to go out that for twenty-five years Marshall Field & Company have made no money in the city of Chicago?

A. I cannot answer that. I only answer what they have told me. I am not the manager of the business. I am manager of the insurance.

Q. Since you come here with that kind of a statement I wish you would be kind enough to tell me what your business was twenty-five years ago and what it has been from year to year from that time up to date so that we can form some opinion as to whether you have been making money or losing money?

764 A. I was Mr. Field's Secretary for twenty-five—

Q. That does not answer my question.

A. I cannot answer whether they have been making money or not as a fact. I can have a lot of suspicion about it.

Q. You had enough suspicion that they were making money to ask for an increase of salary?

A. I was doing all this extra work, coming here for you gentlemen.

Q. Did you ask this extra salary because you come here to testify to railroad rates?

A. Not in this case. This was before.

Q. Was this the only extra service that you performed, testifying here on railroad rates as a justification for that claim for an increase of salary?

A. Not at all. I have done a lot of other things. The insurance department has charge of the construction of all these new buildings that you see around and things of that sort.

Q. Let me get at you in another way. Will you tell me the amount of insurance you have got on that jobbing house today?

A. No, sir, I will not.

Q. You refuse to state that do you?

A. That is against my privilege yes.

Q. Is that against your instructions from Mr. Barlow?

A. Not at all.

Q. Will you tell me the amount of insurance that you had on that same stock of goods a year ago?

764½ A. No, sir I could not tell you that.

Q. Will you tell me the amount of insurance you had on that five years ago?

A. No, sir.

Q. Will you tell me the amount of insurance you had on it ten years ago?

A. No, sir, I could not answer that. I don't know now.

Q. Will you tell me the amount of insurance you had on it twenty years ago?

A. No, sir, I cannot tell you because I cannot remember.

Q. I am talking to you now as an insurance man in your own special line of business and still in your own special line of business you say that you do not know.

A. I do not know what insurance we carried twenty years ago.

Q. Has the amount of that insurance increased in the last twenty years increased or diminished?

A. It has increased.

Q. Will you tell me about the proportion of the increase in the last twenty years?

A. I could not tell you.

Recross-examination.

By Mr. WALTER:

765 Q. You would not want your competitors, taking a supposititious case, you would not want your competitor who has been paying ten cents more than a just and reasonable rate for ten years to have to continue that unreasonable rate simply because you have been and will be competing with him on that basis of rates?

A. I don't know. He may be getting some other benefits that we have not been getting.

Q. I am speaking solely on this supposition and nothing else. Assume that your competitor for ten years has paid ten cents more than a just and reasonable rate, is that any reason why he should continue to pay it, the fact that you are competing with him?

A. We do not ask for an unfair advantage of any kind. We are willing to compete with any one on an even basis but we want an even basis, we do not want a 9 cent differential against us.

Q. You do not want to do business with a man when he has been paying for ten years an unjust and an unreasonable rate simply because that has existed?

A. If he sees fit to pay it I don't know what I have got to say about it.

Q. Suppose he should complain about it to get that rate reduced to a just and reasonable rate and no less, is there any reason that you can think of why you should complain of that fact?

A. I don't know I would like to go into that a little.

Q. If you know of any state it?

766 A. I do not know of anything at this time.

The printed argument of Mr. Barlow hereinbefore referred to was marked "Exhibit D."

Mr. McHUGH: This "Exhibit D" is the argument which you referred to in your testimony?

A. Yes, sir.

Mr. McHUGH: I offer it in evidence as part of his testimony.

Objected to as immaterial irrelevant and incompetent.

Exhibit D here follows:

767 Before the Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Complainants,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Argument in Support of Intervening Petition of the Chicago Association of Commerce, Chicago.

H. C. Barlow, Executive Director.

768 Before the Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Complainants,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Argument in Support of Intervening Petition of the Chicago Association of Commerce, Chicago.

H. C. Barlow, Executive Director.

769 Before the Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Complainants,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Argument in Support of Intervening Petition of the Chicago Association of Commerce, Chicago.

The Chicago Association of Commerce is a voluntary Association organized under the laws of the State of Illinois. It embraces in its membership about 2,400 firms, corporations and individuals, a large proportion of whom are shippers into the territory west, northwest and southwest of Chicago, the territory generally embraced in the complaint, and are therefore vitally interested and deeply concerned in the freight rate adjustment in the territory covered by the complaint. Hence their intervention in this case.

770 The Association respectfully calls the Commission's attention to the testimony offered at the hearing of the case, by

Mr. H. C. Barlow, its Executive Director, as setting forth to some extent the harmful effect the proposed change in the rate adjustment set forth in the complaint will (in the belief of its members) have upon the business welfare of this community.

The complaint sets forth generally that the present rates from New York to Kansas City, Omaha and St. Joseph, to-wit: 1-147, 2-120, 3-93, 4-68, 5-57, are unreasonable, unjust, excessive, discriminatory and prejudicial to the complainants, and charges that the following rates would be reasonable, to-wit: 1-110, 2-95¼, 3-72½, 4-51¼, 5-44, a reduction on the basis of the gross rate of approximately twenty-five per cent. The complaint further sets forth that the rates from other so-called trunk line territory be reduced in like proportion.

In the testimony of Mr. Barlow and the exhibits submitted by him, marked Exhibits A and B, an attempt was made to disclose to the commission the fact that the rates claimed under the complaint would (unless a similar reduction was made in the existing rates from this city) make substantially the same rates from Rochester and Buffalo, N. Y., as from Chicago, and in some instances less rates from Cleveland, Toledo, Detroit, etc., such reductions and the rates actually created thereunder being unnecessarily greatly prejudicial to the business interest of this city.

The Commission will not be unmindful of what appears to be a fact in this case, to-wit: that the real question at interest is not in fact through rates, but an adjustment that will permit wholesale merchants at the so-called Missouri River cities to ship from eastern points into their respective cities and reship to a given destination at the same combined rates as the merchants at St. Louis, St. Paul, Minneapolis, etc. The fact that Chicago as a competitor in the commercial field is not much in evidence, is because the practice of thus combining the two rates to form the through rate, largely exists at St. Louis, as affecting the territory on and west of the Missouri River, and to a great extent at St. Paul, as affecting the territory west thereof; but such combination does not apply to and from Chicago, therefore comparisons with Chicago could not in the very nature of things aid or strengthen their case. That the combination of in and out bound rates and not a complete system of through rates is the thing sought is fully evidenced from the testimony of Mr. Hundley, page 512, stenographer's minutes:

771 Mr. BARLOW: "Then it is after all the ability to ship from New York to St. Joe and reship to Helena at the same rate that the merchant at St. Paul can ship to St. Paul and reship to Helena, is it not?"

Mr. HUNDLEY: "I believe that that is the final working out of the question."

Mr. BARLOW: "But if you could ship from New York to St. Joe and reship to Helena, and St. Paul could also ship from New York to St. Paul and reship to Helena at very much less rates than Chicago could ship from New York and reship to Helena, or St. Louis could, then those two cities would be at a disadvantage, would they not?"

Mr. HUNDLEY: "Yes, sir."

Substantially all the testimony of Mr. White of Minneapolis is devoted to disclosing the territorial division formed by a combination of rates in and out of that city. Page 687, stenographer's minutes:

Mr. WHITE: "Do you mean figuring on basis of the rates from the Seaboard into Minneapolis?"

Mr. BUTLER: "Yes."

Mr. WHITE: "And the locals out and the rates from the Seaboard to Chicago and the locals beyond?"

Mr. BUTLER: "Yes, that is it. That is the only way I know of getting the stuff to the consumer in the ordinary course."

We need not weary the Commission with citations. Nearly
772 all of Mr. McVann's exhibits VII and others dwell upon the importance of thus making the rates and the advantages gained thereunder. In a word, the evidence and arguments all seem to confirm the statement that the rates asked for are solely in the interest of the extension of trade based upon the necessity of being able to ship into the Missouri River cities and out to final destination at the same or less combined rates, as into and out of St. Louis or St. Paul. While the complaint suggests the theory of through vs. combination of local rates, the case attempts to support its application only at the Missouri River cities, quite unmindful but not ignorant of the harmful affect upon other markets. To quote from testimony of Mr. Bell, pages 228-229, stenographer's minutes:

Mr. LYNDE: "Now if you go on and carry out your mileage rate from the Seaboard to Kansas City there is no reason why it should stop there, is there?"

Mr. BELL: "I appreciate the fact that it might not be well to have it go further under present conditions."

Mr. Webster, for the complainants, in his opening remarks before the Commission, says: "We have no desire to seek any advantage whatever over the cities that have sought to intervene." Again to quote Mr. Webster's opening statement, "The result is—the shippers at St. Paul can deliver their goods at the point of destination a point about equally distant from St. Paul or Omaha, etc." Again quoting Mr. Webster: "All we ask is to be equally favored by the railroad companies—and it is no disadvantage to Chicago, so far as we can see it."

Evidently Mr. Webster does not see what Mr. McVann, Mr. Bell and other witnesses do, that the adjustment of rates sought to be obtained under the complaint, would confer upon the Missouri River cities a great and decided advantage over Chicago, St. Louis and other western cities, and that it is that advantage the complainant seeks to obtain. A favorable finding by the Commission
773 would work irreparable harm to the commerce of Chicago, as it must be apparent that under the alleged relief sought under the complaint and prayer, the merchants of the Missouri River cities could ship their goods from the East into their respective cities, and reship them to final destination, at much lower aggregate cost of transportation than a like transaction could be carried out at

Chicago or St. Louis, with the attending injury to Chicago pointed out by Mr. Hundley herein referred to.

We respectfully submit that there is nothing in the complaint alleging or tending to show that the rates from the East into St. Louis or Chicago create a discrimination against the complainants nor that the combination of rates in and out of those cities work to the injury of the commerce of the Missouri River cities. Nor is there anything in the complaint or testimony tending to show or prove that undue competition (caused by existing freight rates) exists between the Missouri River cities and the cities of St. Paul and Minneapolis in the territory directly west or southwest of the Missouri River, and yet the major part of Mr. McVann's exhibit VII is devoted to disclosing that the rates into and out of St. Louis make a combined lower rate than into and out of the Missouri River cities. Again the argument on pages 18-19 of brief for complainants, deals with the combination of locals, not through rates, and almost entirely with St. Louis competition, not St. Paul and Minneapolis. One naturally asks where is the connection between the complaint of the rates into St. Paul and such testimony and argument looking to relief from the competition created by the activities of the merchants of St. Louis? We look upon this testimony and argument as foreign to the complaint and tends only to confirm our former statement that our Missouri River friends desire, in fact, not the establishment of the through rate theory, but a more complete and equable combination of locals.

774 We again submit that the testimony as to the adjustment of rates northwest of Omaha on the line of the Northern Pacific and in the Black Hills territory does not disclose a sufficient volume of business unduly affected by the rate adjustment to warrant disturbing (to the injury of the commerce of other cities and attending loss of revenue to the carriers) the present adjustment into the enormous territory west and southwest of the Missouri River wherein undue competition between the Missouri River cities and St. Paul and Minneapolis is not made apparent. The evidence fails to disclose that the cities of St. Paul and Minneapolis are in fact aggressive competitors of the Missouri River cities in Nebraska, Kansas, Colorado and any of the territory directly west or south thereof. We submit that the alleged discrimination in the Black Hills territory and at certain points on the Northern Pacific, if said discrimination really exists, can and should be removed by an adjustment of rates from Missouri River points and not by an adjustment of the rates from the East into those points; which readjustment would and must in the very nature of things not only seriously reduce the rates but harmfully disturb commercial relations through an enormous territory not affected by the prevailing rates into St. Paul and Minneapolis.

We further submit that Mr. McVann's exhibits of the rates to and from St. Louis vs. to and from Omaha to Falls City, Table Rock, Ashland, Nebraska, disclose conditions brought about largely if not entirely by applying to those points the same or substantially the same rates as apply from St. Louis to Omaha. It would seem this condition can be improved only by discontinuing the application

of the terminal rates at intermediate points, an experience undoubtedly fraught with more or less danger to the interior interest affected.

We come now to that important portion of Mr. McVann's testimony and exhibits that deals by comparison and otherwise,
775 with the unreasonableness of the rates; and here again we confront a conflict between the complaint, to-wit: that the rates from the East are unreasonable and the testimony and argument to-wit: that the rates from Chicago and Mississippi River points are excessive.

Again we submit that no actual or conclusive testimony or argument is offered to prove the unreasonableness of the rates east of Chicago and St. Louis. On the contrary, the entire case is silent on this point. Therefore the assumption is permissible that the complainants are satisfied with the present adjustment east of the Mississippi River. We submit that the testimony and argument, if deemed conclusive in any respect, are in support of the apparent contention that the rates from Chicago and Mississippi River points are unreasonable and unjust. True, the inference sought to be impressed upon the Commission is that the rates from Chicago and Mississippi River points are unreasonable only on business having origin east of Chicago, but nothing shows or tends to prove conclusively that conditions of transportation between Chicago and the River cities warrants or justifies the carriers transporting the traffic of the eastern merchant for less compensation than that charged his competitors at Chicago. Nor is it shown that the cost of service to the carriers is less on eastern than on Chicago traffic, nor that the value of the service is worth less to the eastern than the western shipper. Therefore we feel there is just and reasonable ground for our protest against the assumption on the part of the complainants that commercial or transportation conditions exist that warrant an adjustment of rates similar to those suggested in the complaint, that must we believe and aver not only work to unnecessarily favor the eastern shipper as well as the receiver at Missouri River points, but seriously, and we believe unnecessarily harm and discriminate against the interests of Chicago. If the Commission should be convinced from the evidence and arguments

submitted, that the rates are unreasonable from Chicago (as
776 the evidence undertakes to prove) our contention is (and we believe the case sustains that contention) they are to the same extent too high on business shipped from Chicago. In our belief the case permits of no other reasonable conclusion and no other conclusion can work substantial justice to this market, or afford proper and just relief if such relief is deemed necessary and wise. The territory affected by the proposed change in rate and particularly referred to in the proceedings, may be divided into four parts:

First. The territory between the Mississippi and the Missouri River on direct lines of railways, Iowa and Missouri.

Second. The territory immediately west and southwest of the Missouri River, to-wit: Kansas, Nebraska, Colorado, Utah, Wyoming, Oklahoma, probably a part of Texas.

Third. A part of the Dakotas.

Fourth. Billings, Mont., and points west on Northern Pacific to, but not including, Spokane.

NOTE.—We exclude Pacific Coast points and Spokane as we assume the general blanket rates to those points work a similar hardship on the commerce of the entire West.

As to the first described territory, we think we can state without fear of successful contradiction that the geographical location of the Twin Cities and the Missouri River cities precludes even a fair assumption that there is now or will be in the immediate future, any strong active competition between these two groups of cities for the trade of Iowa and Missouri. That Omaha and Kansas City will not successfully back up into Iowa and Missouri in competition with St. Paul, nor St. Paul push her activities far into Iowa and Missouri in opposition to Omaha and Kansas City trade in those states. Any other condition would be unnatural. The force of this assertion is

777 apparent, when one appreciates the fact that the present rate adjustment is substantially lower to Iowa and Missouri points than any combination of locals on the two groups of cities and must and will remain so under the proposed adjustment. Population Iowa and Missouri 1900, 5,595,000.

Second territory:

The complaint as previously stated is of the rates into the Twin Cities vs. the Missouri River cities. The arguments and testimony attempt to support the contention that the different adjustment into the Missouri River cities restricts the extension of trade of the River cities and therefore constitutes a discrimination in favor of the Twin Cities. We contend the testimony does not show that the Twin Cities are in active competition with the River cities in this territory. On the contrary, Mr. Smith in his testimony, page 101, stenographer's report, in reply to the question: "You do not fear St. Paul competition in the southwestern territory?" replied: "No, certainly not." Mr. Davison, page 233 stenographer's report, in reply to Mr. Atwood's question: "What jobbing cities do you come in contact and compete with St. Paul?" says: "Well, we do not recognize them much as competitors. We come in contact with them, however, in the Northwest." On page 488 stenographer's report, Mr. Hundley says: "No, St. Paul and Minneapolis do not come down into Kansas and Missouri at all." And yet the complainants' petition that the rates into all this territory containing a population in 1900 of 7,105,842, be reduced because of the existing rates into St. Paul, in face of this conclusive proof, that no substantial competition exists between the two localities in this territory.

Third:

It seems clearly stated that certain rates into the Black Hills territory may be out of line, but more particularly in the adjustment west of St. Paul vs. west of Omaha. If this condition does exist we see no reason why it cannot be remedied by a modification west of those points. Certainly the commercial importance

778 of the district does not warrant a complete revolution in rate adjustment throughout the Western country and the method

of making them. The population of five counties in this district in 1900 was 40,604.

Fourth:

A glance at the map will disclose, we think, that natural competition does not exist between the Twin Cities and River cities in the territory of the Northern Pacific east of Billings, Mont., and further that the adjustment proposed under the complaint cannot materially affect the territory on and west of a line drawn through Spokane, owing to the present blanket rate adjustment in that territory that alike injuriously affects the commerce of our central western cities. Therefore the discrimination alleged against the Missouri River cities, if any, is in the territory lying east of Spokane to and including Billings, Mont. The population embraced in this territory from census of 1900 was Montana, 296,779; the three northern counties of Idaho, 35,914.

Conclusion.

First. That the scale of rates proposed by the complainants would work irreparable harm to the commerce of Chicago.

Second. That the complainants do not in fact desire the theory of through rates put into practicable effect; on the contrary, they desire a more complete and equitable adjustment based upon combination of locals.

Third. That all testimony and argument tending to show undue preference in the adjustment of rates in favor of St. Louis is foreign to the complaint.

Fourth. That the testimony and arguments fairly permits the assumption that the proof (if any) is as to the unreasonableness of the rates from Chicago and Mississippi River points on all business.

Fifth. That there is no active or undue competition between the two groups of cities in the states of Iowa and Missouri, that the
779 proposed adjustment of rates can or will render less burdensome to either group of cities.

Sixth. That no substantial or potential competition exists between the Twin Cities and the Missouri River cities in Nebraska, Wyoming, Utah, Colorado, Kansas, Oklahoma, Texas, New Mexico or Arizona.

Seventh. That the proposed adjustment will not materially affect the commercial status of either group of cities on and west of a line drawn through Spokane west to the Pacific Coast.

Eighth. That the territory in which substantial and potential competition may have been shown to exist between the Twin Cities and the Missouri River cities caused partially or entirely by rate adjustment is substantially speaking, the Black Hills and on Northern Pacific, Billings, Mont., to Spokane.

Ninth. That the population in the territory affected by the proposed change in rates but in which no undue competition exists between the Twin Cities and Missouri River cities, to-wit: Kansas, Colorado, Texas, New Mexico, Arizona, Utah, Nebraska, Wyoming, Oklahoma, is at the present time approximately 9,700,000. That the population in the states of Iowa and Missouri is at the present time approximately 6,100,000; that the proposed change cannot mate-

rially alter or affect the competitive relations of the two groups of cities in those states. That the population in the Black Hills was, in 1900, 40,604; Montana west of Billings, 296,779. The three northern counties of Idaho, 35,914, in which it may be claimed the two localities are in competition and that their commercial activities may be affected by the present relative rate adjustment.

From the above it will be seen that a reduction is asked in states and territories embracing a present population of approximately 16,000,00 people (in which it is not shown any undue or potential commercial competition exists between the complainants and the Twin Cities) in order that the two communities may enjoy somewhat more equable freight rate adjustment in a territory embracing a population in 1900 of substantially 373,000.

780 In closing we quote from Messrs. Webster & Atwood, brief for complainants:

"In considering the business welfare of the public we may aptly apply to this case the following from the witness, Mr. Barlow:

"It takes great warehouses to protect the interests of the people and these gentlemen on the River seem to think that the development of that commerce is best brought about by a combination of locals on the great markets. To that we acquiesce, as I say, but we ask that we be given the same advantage, if there is an advantage."

"That principle is one of great importance to the Missouri River cities."

This in our opinion conclusively proves our contention that the adjustment sought is a combination of locals on the great markets, not a system of rates through the great markets. The complainants are not ignorant—nor will the Commission be unmindful of the fact, that the fixing of a basis of rates suggested by the complaint will rob Chicago and St. Louis of like advantages.

If the adjustment of all rail rates to the Twin Cities is wrong (as we believe in many respects they are) the wrong should be righted, by applying a remedy where the disease exists and not by extending its evil effects into a large territory not unjustly or unreasonably affected.

We therefore pray that the prayer of the complainants be not granted.

THE CHICAGO ASSOCIATION OF
COMMERCE.

By H. C. BARLOW, *Executive Director*.

Chicago, January 15, 1908.

781 Mr. WALKER: Do you mean to say that you are willing to stand by and affirm under oath that what is contained in that pamphlet is true and correct?

A. No.

Mr. McHUGH: I do not offer it for that. I want to show what he referred to.

Mr. WALTER: Nobody questions what he referred to.

Mr. McHUGH: I am not offering it in evidence as substantive

proof of any of the facts therein stated. I am offering it simply to identify the argument to which he referred so as to show what argument it is.

Mr. WALTER: Simply to show that there was such an argument?

Mr. McHUGH: Not for the purpose of showing anything except the mere fact that that is the argument that he referred to in his testimony.

Recess to two o'clock.

782

TWO O'CLOCK P. M.

ALBERT G. JONES, a witness produced, sworn and examined on behalf of the complainants deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. Where do you reside?

A. 6418 Greenwood Avenue, Chicago.

Q. Where is your business, what business house are you connected with?

A. I am with Franklin MacVeagh & Company.

Q. They are located where?

A. In Chicago.

Q. What is the character of the business done by them?

A. Wholesale grocers and manufacturers of lines that go with us.

Q. Does that company do business in selling to retailers and others in Missouri River cities and west of that territory?

A. They do.

Q. And in Iowa?

A. Yes, sir.

Q. Where is your competition?

A. Our competition is principally from the seaboard and in that territory. The competition other than the seaboard and Chicago competition would be the Missouri River.

783 Q. The jobbers on the Missouri River compete with you in the sales to the merchants on and west of the river, and to a certain extent in Iowa?

A. Yes.

Q. You may state what effect upon the business of Franklin MacVeagh & Company the enforcement of this order of the Interstate Commerce Commission would have?

A. It would handicap us greatly in the sale of goods of eastern origin.

Q. How?

A. The ability of either the eastern people or the Missouri River jobbers to land their goods there at such lower figures as these reductions give than we can do by bringing the goods from the east and reshipping them.

Q. What is the fact as to whether in the operation of your business the advantage you have mentioned of being able to get their goods to the Missouri River at a lower price than you could get them

in and out to the river operates as a deterrent on business? Is there a moral effect in the fact that your competitors would have an advantage over you in inducing trade?

A. There is not only a moral effect but there is a material effect in that a man who cannot sell goods of a known value and recognized as staples in a given territory as cheaply as his competitors who are jobbers in that territory or as competitors who are jobbers or manufacturers in the east is at a disadvantage. The moral effect pervades the entire line.

Q. Is that true not only of business of your particular house but all the business of Chicago generally where the reduction of rates would apply?

A. It is a principle that applies to all business that I know anything of.

Cross-examination.

By Mr. WALTER:

Q. What position do you occupy with Franklin MacVeagh & Company?

A. Traffic Manager.

Q. How long have you been traffic manager?

A. About seventeen years.

Q. As traffic manager what do you do?

A. I handle all freight matters, direct the way in which goods shall be shipped in and out and determine what points we can ship goods from to advantage and what it costs to deliver goods in certain territory in competition with the figures that are offered by competitors.

Q. Your company is a wholesale grocer and manufacturer of some of the articles that go into that general class of wholesale groceries?

A. Yes.

Q. Where do you get most of your supplies?

A. Our canned goods originate in seaboard territory largely. Our coffee of course comes from foreign markets, Brazil or Java or Sumatra, some of those places, and spices from there and olives from Spain and so on.

Q. You can ship all of those articles direct from the seaboard to the point of destination wherever they are consumed can you not?

A. No sir.

Q. You have branches in the east, warehouses?

A. Not established branches no.

Q. You have warehouses?

A. No.

Q. Store rooms?

A. No.

Q. Nothing of the sort?

A. No.

Q. No facilities whatever for taking care of your property in the east and taking advantage of a through rate from the seaboard to the Missouri River?

A. None whatever.

Q. You ship no goods in that way?

A. Not to the Missouri river.

Q. Do you ship any to points west of that?

A. No, sir.

Q. Points intermediate between Chicago and there?

The WITNESS: Business originating at any point between Chicago and the Missouri River?

Q. Any shipments from seaboard territory to any point other than Chicago?

A. Yes we ship to Texas.

Q. Is there any reason why you could not ship to the Missouri River just as easily as you can to Texas?

785½ A. Yes, there is. It may be applicable to our business only, but the consumption of canned goods is very much larger per capita in Texas than it is along the Missouri River and we can ship a straight car of absolutely one class of goods to a point in Texas, which we are unable to do along the Missouri River not having a warehouse there.

Q. Not having a warehouse at the Missouri River?

A. Yes.

Q. What reduction applies on your goods under the Commission's order?

A. Some of the goods would be in what they designate in eastern classification as Rule 26 which is about equivalent to our third class.

Q. What class is it in the seaboard?

A. This is in seaboard territory.

Q. That is third class you say?

A. Yes.

Q. What is the reduction under the Commission's order on third class?

A. I believe that is four cents.

Q. Are you sure of that?

A. Third class is 5 cents.

Q. So that you have a reduction on part of your goods of 5 cents on the hundred pounds to meet?

A. Yes, sir.

Q. What is the other reduction?

A. Assuming that the goods move in car loads the other reduction would be on fifth class basis 3 cents.

Q. All these reductions are on car loads are they not?

786 A. No some of the goods move in less than car loads. Some of the goods are of a nature that are rarely shipped in car loads.

Q. What proportion of your goods are shipped in car loads and what in less than car loads?

A. West of the Missouri river or at the Missouri River points and west as a total.

Q. As a total?

The WITNESS: You are inquiring about our business?

Mr. WALTER: Yes, your own business.

A. I should say that probably 80 per cent of our goods were shipped in less than car loads.

Q. The reduction made by the Commission's order applies alike on the hundred pounds whether car loads or less than car loads. Isn't that true?

A. It applies on each class according to the class which it goes under of course.

Q. The reduction in the Commission's order applies on the hundred pounds, without regard to the quantity isn't that true, whether it is car load or less than car load?

A. It applies so much on each class. Of course the class may be in car loads or less than car loads. They are all handled as class rates.

Q. The reduction is so much a hundred pounds without regard to quantity?

A. No, the reduction is not so much per hundred pounds regardless of quantity.

787 Q. Is there a difference in the classification as to whether it is car loads or less?

A. Yes, sir.

Q. That is the way you understand it?

A. Yes.

Q. Is that true both of official and western classification?

A. I think there are very few exceptions to that.

Q. Can you give us any examples, items?

A. An example of the official classification would be cheese which is the same in car loads or less.

Q. Give us some where there is a difference?

A. The item of canned goods would be different ratings of car loads and less.

Q. What difference, what is it in car loads?

A. It is what is known as Rule 26 in the official classification in less than car loads and fifth class in car loads. I am speaking of canned fruits and vegetables. There is a difference between canned goods and canned fruits and vegetables.

Q. In car loads that takes fourth class?

A. Fifth class.

Q. In less than car loads?

A. What is known as Rule 26, which is 20 per cent off of the third class.

Q. That is not affected at all by the Commission's order is it?

A. Yes it affects third class ratings and affects the percentage reduction just the same.

Q. So that it would be 20 per cent of the difference which
788 is 5 cents?

A. Yes.

Q. That would amount to one cent?

A. Approximately one cent. Are we discussing through rates?

Mr. WALTER: We are speaking of the traffic affected by the Commission's order.

A. This is a part of the through handling of the freight. It consists of the classification east of the Mississippi river and *and* the

western classification west. I am starting at the initial point. I want to correct a statement I made. In these rates the reduction applies on the rate west of the river and consequently the reduction is fully five cents. It is not a part of the Rule 26 or 20 per cent deduction. That was my mistake. The reduction on the third class rate would be fully five cents.

Q. Isn't there a great deal of your goods sold at the same price at the Missouri River as you would sell them at any other place, in other words there is a standard price from which you do not vary no matter what the freight rate may be?

A. There are no goods which we sell at any such price or on any such plan.

Q. What about sugar?

A. Sugar is not sold in any such way.

Q. Isn't there a standard price for sugar without regard to whether the freight rates fluctuate or not?

A. No, sir.

789 Q. Where do you get your sugar?

A. Some of it is brought from New Orleans, part of it comes from Colorado even and Utah and some from New York.

Q. Very little from New York?

A. No during the summer time the majority of it comes from New York.

Q. Your competitor who buys sugar from New Orleans or who buys it from Colorado, any point save the eastern coast would have the same advantage or better advantage in the buying of of his goods than you would have, being nearer the base of supplies, speaking of the Missouri River cities only now?

A. Sugar to my knowledge was never known to move from here to the Missouri River except under stress of some famine or something of that kind. Sugar is not sold the same as other goods. It finds its own outlet according to the nearest production point.

Q. How much of your business is sugar business?

A. None in that territory.

Q. So that this reduction of rate does not affect your sugar business at all?

A. No, sir.

Q. What proportion is your sugar business of your total business?

A. I have not the figures for the last two or three years but the last time I knew of it it was about 8 per cent.

Q. Do you think that is a fair average now, isn't it nearer 40 per cent?

A. No, sir, I think not.

790 Q. Would you say that you handle a greater amount of sugar compared with the total business, less or about the same as the average wholesale grocer?

A. I should say that we handle less, very much less. We avoid the sale of it whenever we can.

Q. Who are your competitors here?

A. Our principal competitors are Sprague Warner & Company, Reid Murdoch & Company, Steele-Wedeles.

Q. A large number of them?

A. Yes, sir.

Q. And a large number at St. Louis?

A. Yes, sir.

Q. And at Cincinnati?

A. Yes.

Q. You do not know but what their percentage may be much higher, that is the sugar percentage of the total business than your own?

A. It is not only much higher at these towns than ours but it is higher in the city. The other grocers sell more sugar in the city than we happen to.

Q. As to all these competitors at St. Louis and New York City the reduction of the Commission affects them alike as it does you. That is there is no difference so far as its effect is concerned upon you and upon your competitors at those points?

The WITNESS: Our competitors in the city here?

Q. In the city and at St. Louis and all the intervening area to the seaboard?

A. There is no difference in the way it affects our competitors who do business in that territory.

Q. The reduction affects all alike?

A. All who do business in that territory yes sir.

Q. You do sell groceries right in the Missouri River cities?

A. Yes, sir.

Q. You do so at a profit?

A. Yes.

Q. This reduction brought about by the order of the Commission, your conclusion as to its effect is based upon what it appears on its face isn't it, not upon any calculation or experience or direct knowledge?

A. Yes it is based on direct knowledge. I know where the goods originate. I know what the goods cost them landed there and how much difference this will make in the cost to them.

Q. Who pays the freight rate?

A. That depends on whether the goods are sold delivered or not.

Q. As a rule do you sell them delivered or f. o. b. cars?

A. We sell a large portion of our goods in that territory delivered.

Q. You pay the freight rate?

A. We pay the freight rate.

Q. Does the price vary with the freight rate?

A. Yes, sir.

Q. What is the volume of your business in the Missouri River cities?

791½ A. I have not access to the figures. These figures are considered more or less confidential. I never thought to get them.

Q. You never thought to get them. You have just said that the selling price at the Missouri River cities, is the delivered price and that the freight rate makes a difference in the price you receive?

A. Yes, sir.

Q. Are you giving that because somebody has told it to you or have you examined the figures yourself to see?

A. I examine every order that is sold delivered.

Q. In order to make a difference in the price of canned goods what fluctuation must there be in the freight rate?

A. That would depend upon what quantities you are selling. If you want to know just how it figures in the price I can tell you.

Q. Take a car load of canned goods and vegetables which you spoke of a moment ago, you say I believe on that that the rate is in car loads fifth class?

A. Fifth class.

Q. In order to make a difference in the selling price how much must the rate be advanced or reduced?

A. A cent a hundred will make a difference in the selling price on a car load of goods.

Q. You meet your competitors prices?

A. We do where we can without—

Q. Positive loss?

792 A. Without loss. Unless other business is contingent on it in which case we take a loss.

Q. What was the total amount of your business at the Missouri River cities?

A. I don't know.

Q. Have you any idea?

A. No, sir.

Q. You do not know what the effect of this rate is going to be on your business there?

The WITNESS: You want to know the amount of money that is represented by the business that we do there, is that your question or the tonnage?

Q. The total amount of business in sales and value?

A. I don't know the value. It is a very large business.

Q. Can you give us some idea?

A. I cannot.

Q. What is the total amount of your business?

A. I don't know our total figures.

Q. What was your profit last year?

A. I don't know the total profits. I know the profits on transactions as they come around.

Q. Your business is a very profitable one isn't it?

A. Not very. The grocery business is done on a small margin.

Q. It is on account of the vast volume of the business that makes the profit?

A. That is it.

Q. What was the total profit last year?

793 A. I haven't any idea of the total profits. Last year was a very poor year in the grocery business. I should not wonder if we did not make any money last year.

Q. What is the capitalization of your company?

A. We are a partnership.

Q. What is the amount invested?

A. I do not know.

Q. Have you any idea?

A. No, sir.

Q. Do you know what is the value of the property owned by Mac-
Veagh & Company?

A. I don't know that.

Q. You recognize the transportation rule that the longer the haul
the less the rate per ton per mile should be, other conditions being
equal?

A. We recognize that as a rate making principle?

Q. That is as an economic rule of transportation?

A. It has some general recognition. I do not recognize it as an
established and infallible rule.

Q. It is true that the through rates should be less than the local
rates between the same two points?

Objected to by Mr. McHugh as not proper cross-examination.

The WITNESS: Do you mean should be or is?

Mr. WALTER: Should be, and as a rule is?

A. I know that there are some very notable exceptions and our
rates in the west are not built up that way.

Q. I am speaking of the country as a whole, not any special ex-
ceptions to the general rule but the rule?

794 A. I believe that in a measure it is considered that a longer
haul is performed at a lesser rate per ton per mile.

Q. Take this example from A to F as a through route would take
a less rate than from A to B, B to C, C to D, D to E, E to F, through
traffic passing through all these points?

A. That rule does not hold good in rate making in the United
States.

Q. Do you mean to say that the through rate is not less than the
sum of the locals between the same points?

A. The through rates may be less than the locals.

Q. And as a rule isn't it?

A. Yes, I think in the majority of cases it is.

Q. If that were not true then products could not reach the con-
suming market in a large part of our country, isn't that true?

A. That is rather a large presumption. That is rather too large
a presumption I fear, because this country is surrounded by water
which largely is the governing factor in making rates rather than
distances. It is the way in which the distributing markets are ap-
proached from the different ports.

Q. I am speaking now of a rail situation. Of course that is
changed by water. That results in the through rates being less
doesn't it than the local rates, the water competition?

795 A. Yes.

Q. A good deal of your business is handled on commodity
rates isn't it?

A. No, I think there is less than two per cent of it handled on
commodity rates. Allow me to amend that. A commodity rate
need not necessarily always be a class rate but simply embrace a
larger variety of commodities. On that showing, that it does not

make any difference in the rates I will say that less than two per cent of our business is handled on commodity rates.

Q. You understand that anything that is carried on commodity rate not covered by the class rates is not affected by this reduction, under the Commission's order?

A. Yes and there are no commodity rates so far as we are concerned involved in this change.

Q. Do you mean to say that goods which come within the purview of groceries none of them are carried on commodity rates?

A. Not within the territory affected.

Q. What do you mean by that?

A. Between the seaboard and the Missouri River.

Q. Do you mean to say that there are no groceries shipped from the seaboard territory to the Missouri River cities which take a commodity rate?

A. Not that I am aware of at present. There have been at times.

Q. You do business in Oklahoma common points?

A. Yes.

Q. And Texas common points?

A. Yes.

796 Q. Montana common points?

A. Yes, sir.

Q. Idaho common points?

A. Yes.

Q. You do it successfully under competition?

A. We do business there to a large extent.

Q. If it was not a profitable business you would not do it, if it was not above the cost?

A. No.

Cross-examination.

By Mr. WEBSTER:

Q. Your principal house or place of business is located in the city of Chicago?

A. Yes, sir.

Q. You sell goods to retail grocers in the city of Chicago?

A. Yes, sir.

Q. You can state now about the percentage of your sales that is made to Chicago dealers?

A. The business varies considerably during this part of the year. Probably 30 per cent.

Q. About 30 per cent of your sales are made in the city of Chicago?

A. At this time of the year. In the fall there may be only ten per cent. Probably there is less than ten per cent. That is not official, it is simply an estimate.

Q. You also sell groceries through the state of Illinois outside of the city of Chicago?

A. Yes, sir.

Q. Can you state the percentage of your sales that are made in the State of Illinois outside of the city of *the city of* Chicago?

797 A. No, sir I cannot.

Q. Can you approximate it?

A. No I can get the figures but I haven't them at my command now.

Q. Think you it might be as much as 20 per cent or 25 per cent?

A. I could not say. I never attempted to collect that data.

Q. You would not say that it does not equal 20 or 25 per cent of your total sales?

A. I would be counting up 50 per cent and I would not know what to do with the other 50.

Q. Don't worry about that now, we will get to that by and by.

A. I cannot tell.

Q. You come here as an expert in your business, to state the injuries to it and therefore I conceive that you ought to know something about it if you are going to give us any valuable information. I will renew the question. Will you say that your sales in the state of Illinois outside of the city of Chicago are not equal to 20 or 25 per cent of your total sales?

A. I will not say.

Q. You sell goods in the State of Wisconsin do you not?

A. Yes.

Q. Will you tell us about the percentage of your sales that are made in the State of Wisconsin?

A. I do not know what percentage of our business is done in any one state.

Q. You cannot answer that?

A. No.

798 Q. Then your house also sells some of its groceries in the state of Indiana does it not?

A. Yes.

Q. Can you state the percentage of your sales in the state of Indiana.

A. I cannot state the percentage of our sales in any one state.

Q. You sell some of your groceries in the state of Michigan do you not?

A. Yes.

Q. Can you state the percentage of your gross sales made in the state of Michigan?

A. No, sir.

Q. Do you also sell groceries in the state of Ohio?

A. Very little if any.

Q. You do sell some?

A. I don't know whether they sell any except an occasional spasmodic order.

Q. Do you sell any groceries in the state of Minnesota?

A. Yes, sir.

Q. Do you know the percentage of your sales in the state of Minnesota?

A. No.

Q. Do you sell any groceries in the Dakotas?

A. Yes, sir.

Q. Can you state the percentage sold there?

A. No.

Q. I will put it in another way, can you state about what proportion of your entire business is made up of sales in the states of Illinois, Michigan and Wisconsin?

A. If I cannot state separately I cannot state collectively.

799 Q. Is it not true that the greater proportion of your entire business is done in the surrounding states of Illinois, Michigan and Wisconsin?

A. The greater proportion of our business is done in the surrounding states necessarily.

Q. And therefore more than 50 per cent of your entire business is done in the states immediately surrounding, and therefore all that business is not affected by the transportation between the Mississippi and the Missouri rivers, because it does not pass over that territory. So that is eliminated. Then your sugar is eliminated because you eliminated that yourself as 8 per cent of your business. Let me get at another thing about it. You do do a business in flour do you not?

A. Yes, sir.

Q. And the flour comes from the wheat that is raised in the western states does it not?

A. Yes, sir.

Q. That therefore does not come across the Atlantic Ocean and is not Atlantic seaboard business. Aside from that you handle canned goods do you not?

A. Yes, sir.

Q. That includes canned meats does it not of different kinds?

A. It does in its designation but it does not in actual practice. We do not sell any canned meats to speak of except a few devilled meats.

Q. You do sell some canned meats then. Don't you sell any of the canned meats that are manufactured by the big packing
800 houses like Armour's and Cudahy's and Swift's and Morris Brothers?

A. No sir as a rule they distribute them themselves.

Q. None of their hams?

A. No, sir.

Q. You do not have them in your business?

A. We handle a few hams and a little bacon for local consumption around the immediate states. We do not regard it as a factor.

Q. Whatever you do about that that is not affected by this matter?

A. It does not amount to anything.

Q. Then among other canned goods you handle fruit do you not such as apples?

A. Yes.

Q. And canned peaches?

A. Yes.

Q. And pears and cherries and so on?

A. Yes.

Q. Your canned fruits of that sort a large percentage of those

come from Michigan and Illinois do they not, and surrounding territory where fruits grow abundantly?

A. No, sir.

Q. Where do the apples grow that you say you handle?

A. Local apples are not considered a high class apple.

Q. I ask where the apples come from that you handle in your house?

A. Largely from New York state.

Q. Grown in New York state?

A. Yes.

Q. That being so I want to know the percentage of the whole business that is made up of apples that grow in New York state
801 if you know anything about that?

A. I never have shown a disposition to get into such trifles as that.

Q. Then if you have got any apples that are affected by this reduction of rates you regard it as a trifle too insignificant for your consideration do you?

A. I should regard the effort necessary to go into an investigation of that kind as entirely unwarranted by what I would get out of it.

Q. So that you do not regard the apples that come from the seaboard territory as affected by this rate as worthy of consideration?

A. I do not regard the time required to investigate a thing of that kind as being repaid by the results. We want to sell apples.

Q. Then your business is not seriously affected so far as the trade in apples goes?

A. I could say that we could readily spare some of our apple sales.

Q. That is of no concern?

A. No, sir.

Q. Now we have eliminated sugar and flour and we have eliminated the other things that grow in your immediate vicinity. What business have you got left if any in your grocery line outside of olives that come from Spain and coffee that comes from Brazil—those

are the two things that you spoke of—can you tell me for a
802 moment what percentage of your entire business is made up of olives that come from Spain?

A. No sir.

Q. Is it as much as two per cent?

A. I have never made a comparison of its relation to the total business.

Q. If it was even two per cent can you tell what percentage of that if any goes to the Missouri river and what part of that two per cent is sold in Chicago? You cannot tell that can you?

A. No, sir.

Q. So that you cannot state as a fact then that you would lose a dollar on your Spanish olives on account of this reduction in rate can you?

A. We sell a great deal of olives at the Missouri River on which we would be at a disadvantage, what relation it bears to our total business I cannot say.

Q. Do you regard that too as too insignificant for investigation or consideration?

A. Not for my consideration. I do for an investigation of the minutia of it.

Q. It is too insignificant for you to inquire into in order to testify to as a witness in this case as a representative of your house?

A. No, sir it is not.

Q. You have so treated it haven't you?

A. No sir I have treated the question of canned apples in relation to our entire business, particularly as to what canned apples came from New York as insignificant. That would probably take 803 two weeks for investigation.

Q. So that you don't know anything about that?

A. No.

Q. What have you got left now that you can testify to that is affected at all by this reduction of rates between the rivers?

A. When I was a boy a grocer would be handling just the items that you have mentioned but that is a long while ago and they handle other things now. They handle peas and beans and—

Q. Let us deal with those a minute. Where do peas and beans grow. Don't they grow around in Illinois as well as anything else?

A. No sir.

Q. Do you mean that the state of Illinois cannot raise their peas and beans?

A. I guess they can raise grain to better advantage probably.

Q. How about the state of Michigan, do they raise peas or beans?

A. Not for canning purposes.

Q. What states do you think raise the peas and beans that are canned?

A. It depends upon the grade. The standard of peas and beans originates in seaboard territory.

Q. I want to know where. I want to know what state and place you think raise peas and beans better than you can raise them in this middle west?

A. I am not prepared to say as to better. They raise them in larger quantities.

Q. Where?

A. Maryland and Pennsylvania and New Jersey.

Q. Do you know that or are you simply guessing at it?

804 A. I know that we draw our supplies from there which is the best indication of it.

Q. What percentage of your whole business is made up of the sale of peas and beans if any, what percentage is that of your entire business?

A. We have never separated such items into peas and beans. We have taken them as the items of canned vegetables which originate in that territory.

Q. I want some information. You are here to give us information. I want to know what percentage of your entire business is made up of canned peas and beans that grow and are canned in either Maryland, New Jersey or Pennsylvania?

A. I do not know what proportion of our entire business.

Q. Is it as much as two per cent?

A. It occupies a very healthy place in our lost of goods. I do not know the percentage.

Q. You won't say it is equal to two per cent?

A. I won't say it is equal to any per cent.

Q. If it was two per cent 30 per cent of that two per cent is sold in the city of Chicago, another per cent of it is sold in the state of Illinois and another per cent in the state of Michigan and another in the state of Wisconsin and so on. That is true isn't it?

A. If it is two per cent it would be so divided I suppose.

805 Q. You do not know what percentage however insignificant it may be of these peas and beans goes to the Missouri River?

A. I do not know what percentage of peas and beans go there no sir.

Q. Then the long and short of this business is that you cannot tell the percentage of your business in any line of goods whatever that comes from the Atlantic seaboard or anywhere else and goes to the Missouri River that would be affected by this reduction of rate?

A. No, sir.

Cross-examination.

By Mr. Atwood:

Q. Do you know whether or not the Ocean and rail rate to the Missouri River points by way of the Gulf is less than it would be by way of Chicago, New York as the port of entry?

A. I do not know just what those rates are at the moment. They have been at times less, but the line that has made those rates has been as I understand it—lower than what rates do you say?

Mr. Atwood: Take shipments originating in foreign ports Spain?

The Witness: You mean the rate on import goods?

Mr. Atwood: That is what I am driving at, the objective point being the Missouri River points. Whether the ocean and rail rate via the Gulf would be less than the ocean and rail rate by
806 way of New York and Chicago, if I have made myself clear?

A. We never have done any importing with the Missouri River as the destination so that I am unable to say.

Q. I thought perhaps your general knowledge of the freight situation would enable you to give us some light on that point, not exact figures but approximations and by comparisons?

A. The import situation fluctuates so much that what I might say today would not be true tomorrow. I have known of a rate being made by the Missouri River for 8 cents above Chicago on import business and within two weeks it might be the full local.

Q. Not unfrequently, I think I can infer from that statement, it has transpired that the ocean and rail rates by way of the Gulf to the Missouri River points from foreign ports has been considerably lower than by way of New York and Chicago to the same points?

A. It frequently happens so I believe.

Q. I think you mentioned several of the commodities that would come from these foreign points, olives, coffee, and things of that sort?

A. Yes.

Q. I was trying to save a little time by enumerating them?

A. I will explain why these rates are not always available.

807 Q. That is not quite it. The only question I have now is whether or not those are the foreign commodities that are used in the business by yourself and your competitors upon the Missouri as well?

A. Olives is one of them.

Q. Coffee is another?

A. Coffee is another.

Q. Spice is another. All of those come from foreign countries and have to get into a warehouse either on the Missouri River or at Chicago in some way?

A. Yes but there is a difference between these commodities. Coffee is one of them that has a lower rating I believe. Most of the other commodities are brought in exclusively via New York.

Q. It is agreed that coffee is one of the things that can be obtained upon the Missouri River upon an ocean-rail rate from the port of origin to the point of destination ordinarily or at least frequently more cheaply than by way of New York?

A. Yes.

Q. You say spices as your observation goes have New York as their port of entry?

A. Yes, sir.

Q. Of course there is no inherent transportation difficulty in the way of having them come in by way of the Gulf is there?

A. I do not think there has ever been any spices landed direct in New Orleans excepting as transhipped from New York.

808 Q. Of course you say you never made foreign shipments to the Missouri River points yourselves, your business would not occasion your doing that?

A. I have qualified that to an extent. We have figured on shipments from London to the Missouri River with a view of meeting western competition.

Q. Have you warehouses there?

A. No, sir. We would have to distribute them through warehouse men.

Q. Through a local representative?

A. Through local handler.

Q. Who is your local representative on the Missouri River if any you have?

A. We deal with D. A. Moore Transfer and Warehouse Company.

Q. In what city?

A. Kansas City.

Q. And they act as distributing agents for you under some circumstances?

A. Simply as warehouse men and transfer people.

Q. These sales are made by you and your salesmen?

A. Sales made by us.

Q. And the distribution made by them in pursuance of orders laid upon them by you?

A. Yes.

Q. Do the orders emanate from Chicago that govern the Moore people?

A. That depends upon a man's credit and whether a salesman has authority to order delivery made.

Q. But the authority of that salesman comes from Chicago?

A. Yes.

Q. Either directly or indirectly the direction comes from Chicago that is laid upon Moore in the fulfilment of any delivery is that right?

A. Yes, sir.

Q. Do you know what percentage of the whole grocery business is covered by coffee?

A. No, sir, I do not.

Q. An approximation I apprehend would be the best anybody could give. It is quite a considerable item is it not?

A. There are some houses whose coffee business makes up a very large percentage of their business.

Q. How is it with your house?

A. With our house it is not very large.

Q. Is it abnormally small, that is speaking from the standpoint of the average wholesale grocery?

A. I should say it was not over 5 per cent.

Q. You are now speaking of the MacVeagh business?

A. Yes sir I haven't any idea. That is entirely at random.

Q. That would be rather a guess than an opinion?

A. Yes.

Q. Have you anything more than a surmise as to the difference between the percentage or proportion that coffee bears to your whole business and that coffee bears to the business of the average wholesale grocer here in Chicago?

A. There is one wholesale grocer here whose coffee business is reputed to be over 40 per cent of his business, yet it is a local business.

Q. I am now speaking of the wholesale grocers who are situated not dissimilarly to yourselves, here or in this immediate vicinity and competing more or less in the same places?

A. I will state that we do very little coffee business on the Missouri River or west.

Q. How about tea, is that a factor of considerable moment in the business of the average wholesale grocer?

A. It is not a large factor.

Q. Do you mean now for MacVeagh or generally speaking?

A. For any wholesale grocer.

Q. Are there tea houses that make a specialty of that that the trade is in the hands of largely?

A. Yes there are tea houses that make a specialty of it who sell most of the teas that are sold.

Q. That is what I was getting at, whether or not the bulk of the tea business was handled through wholesale grocers or tea houses specially?

A. Tea houses largely.

Q. When you speak of its not being a considerable factor do you mean that it is low and the percentage is in the neighborhood of two, three or five or seven or eight per cent? I understand that whatever you say would be but a mere approximation?

811 A. We list about 15,000 items. To figure out the percentage of any one of those items to our general business would be a very difficult thing. I know the character of business we do in different localities but to reduce that to its relations with the rest of the business I could not undertake to do.

Q. I won't trouble you with that line of questions any further then. Such tea as you do handle does it come to you from the west or the east, by way of the Pacific coast or the Atlantic seaboard?

A. Some grades of teas come to us by way of the Pacific and others are almost all sold from New York auction as I understand it. There are certain kinds of teas I do not know just the kinds that are handled at public auction in New York.

Q. In dollars and cents could you give us any notion as to the proportionate amount that comes from the Occident and the Orient by way of the Pacific or the Atlantic?

The WITNESS: As supplying this market.

Mr. ATWOOD: That you handle yourself?

A. That we handle ourselves probably 6 per cent of it comes from the Occident direct.

Q. You mean the Pacific coast?

A. Yes.

Q. Do you think that is fairly illustrative of the situation of the wholesale grocery houses in this vicinity?

812 A. Of the origin of the tea I should say that was about the percentage.

Q. Of course you would recognize that that relation of goods that can reach your Missouri River competitors by way of the Gulf or by way of the Pacific coast on terms that are advantageous as compared with your own is something that you could not complain of?

A. Certainly.

Adjourned to ten o'clock tomorrow morning February 17th, 1909.

813 On February 17th 1909 at ten o'clock A. M. the parties met pursuant to adjournment.

Present as before.

LEWIS B. BOSWELL, a witness produced on behalf of the complainants was duly sworn and deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. Give your full name?

A. Lewis B. Boswell.

Q. Where do you reside?

A. Quincy Illinois.

Q. What is your business?

A. Commissioner of the Quincy Freight Bureau.

Q. What is the Quincy Freight Bureau?

A. The Quincy Freight Bureau is an organization of manufacturers, jobbers and others who are shippers, and bankers.

Q. The purpose of it is to conserve and protect the commercial interests of the city?

A. Yes it is one of a similar line of organizations that is created more particularly for the purpose of conserving the interests of the city as a whole in the matter of rates relation of rates and incidentally of the members that make up the organization.

Q. How long have you been commissioner of the Bureau?

A. About ten years.

Q. Prior to that you were in what business?

814 A. I was in the manufacturing business.

Q. In your experience in the manufacturing business and as Commissioner of the Freight Bureau have you had occasion to study the relation of rates to commerce and the effect of the relation of rates upon the development of cities?

A. Well, I have studied that more since I have been Commissioner than while I was connected with the manufacturing business. In my former business I paid attention only to the rates that immediately affected it.

Q. You may state the population of Quincy?

A. About 45,000.

Q. What is the character of the commercial interests of the city?

A. Manufacturing predominates, with a very fair and large jobbing interest.

Q. State what the fact is as to whether Quincy is a city of importance in the lines you have mentioned?

A. Quincy is the third largest manufacturing city on the Burlington system. It is the largest manufacturing city in the Mississippi valley north of St. Louis with a greater diversity of articles manufactured.

Q. The rate situation as it exists is that the rate from the seaboard territory is to Quincy and then the rate is from Quincy to the Missouri river cities?

A. Yes, sir.

Q. So that the sum of the rate from the seaboard to Quincy and the rate from Quincy to the Missouri River equals the rate and is the rate from the seaboard to the Missouri river cities?

A. Yes, sir.

Q. If the order of the Interstate Commerce Commission in this case should be enforced what effect would it have upon the business now done at Quincy and the development of the city?

A. We think it would be detrimental.

Q. How and why?

A. From the fact that the reduction in rates will give eastern competitors and eastern interests a lower combination through to the Missouri river and Denver than jobbers and manufacturers interested would obtain by the continuance of the present rate basis.

Q. Does the rate situation which obtains at a city enter into as an important consideration or determination as to the location by any one of a new business enterprise?

A. I think so.

Q. You may state whether the breaking of the rate at Quincy as you have testified is a factor which does affect and has affected the location of industries jobbing industries and manufacturing industries at Quincy?

A. I think naturally so.

Q. If the order of the Commission goes into effect the equality that has existed and on which these industries have been established would be destroyed?

A. The equality would certainly be altered.

816 Q. To your prejudice?

A. I think so.

Q. Would that have a deterrent effect upon the establishment of new industries at Quincy as well as a prejudicial effect upon the business already established there?

A. I think it will affect the entire Mississippi valley.

Q. It would affect Quincy in that way?

A. Yes, sir.

Q. What you have said with reference to Quincy applies to the other principal Mississippi River crossings?

A. Wherever these rates break.

Cross-examination.

By Mr. WALTER:

Q. Who asked you to come here?

A. We were informed there was to be a hearing on this case and the Board of Government of the Freight Bureau instructed me to attend the hearing.

Q. Who advised them of this hearing?

A. Mr. McHugh.

Q. And requested them if they saw fit to send a representative here to testify in behalf of the railroads?

A. Simply informed us that there would be a hearing, and if we desired to be represented we could do so.

Q. It was on their initiative that you came here?

A. I won't say that because we have preliminarily been interested in this case for some time.

Q. This case has been pending for a number of years
817 hasn't it, a couple of years we will say before the Commission?

A. I suppose so.

Q. You knew what was before the Commission?

A. In a general way yes.

Q. That is part of your business isn't it?

A. To a great extent.

Q. To keep track of the proposed changes in rates.

A. Yes.

Q. Whenever you think Quincy is involved to take such action as will protect Quincy?

A. If we are big enough.

Q. I understand you to say that you are the biggest manufacturing city in the Mississippi valley north of St. Louis?

A. Yes.

Q. And consequently your weight is quite some?

A. To some extent we hope.

Q. Yet during the time that it was before the Commission you did not appear there as a witness or by argument?

A. No.

Q. Took no part whatever?

A. No, we had no fund for that purpose.

Q. You are paid, you are a salaried man?

A. Yes, sir.

Q. Your expenses are paid whenever you have to make any to keep up your business?

A. Yes, sir.

Q. So there is a provision whereby you could take such action as you think necessary to protect Quincy?

818 A. If the Board authorizes it. I am subject to instructions of the Board.

Q. But you are employed for that purpose and have a fund provided for that purpose.

A. No, there is no fund provided for the purpose.

Q. They do take care of your expenses and salary?

A. Yes.

Q. That constitutes a fund for doing it?

A. You understand that the income of the organization is very limited as a consequence personally I am restricted as to how far I can go and where I can go and not without the consent of the Board.

Q. But if you thought it was to the interest of Quincy and they thought so there would be no difficulty about your getting your transportation paid to Washington I take it to appear before the Commission?

A. We felt in this case that the interests of Quincy would be correlated with those of St. Louis, St. Louis being a stronger point financially and otherwise and appearing in the case we thought that whatever might be said or done by Chicago on this end and St. Louis on the other would reflect so largely the general situation at Quincy that it would be a useless expense on the part of Quincy to enter into the case formally and consequently we have simply been on the outside.

819 Q. Don't you think that the Commission is as much entitled to your knowledge of affairs as the courts?

A. If they desire it.

Q. Don't you understand that there is full opportunity for full hearing before the Commission, that they would like to have all the light that they can?

A. Yes that is my understanding.

Q. And as a body charged with a duty under the law they are

entitled to have information which would govern them in their action?

A. I should think so.

Q. There is no greater reason why you should appear now than then?

A. No, I don't know that there is any greater reason.

Q. Voluntarily I am speaking now?

A. Yes.

Q. Why didn't you appear voluntarily before the Commission?

A. We were never asked to appear before.

Q. You say you are the chief manufacturing city north of St. Louis?

A. That is my understanding.

Q. What is the volume of your manufactures there?

A. I don't know sir.

Q. Do you know what Minneapolis' out-put is?

A. No, I could not give you that.

Q. Don't you know that Minneapolis far exceeds the output of Quincy?

A. I don't know.

820 Q. As a matter of fact you do not know whether Quincy is the first north of St. Louis or not?

A. Quincy has the largest number of manufactures.

Q. Of individual manufactures?

A. Yes.

Q. You do not mean to say that the out-put is the largest?

The WITNESS: In the volume of dollars and cents?

Mr. WALTER: Yes.

A. I could not answer that.

Q. What is your rate in from the seaboard?

A. 117 per cent of the Chicago rate.

Q. What is it in cents?

A. 88 cents.

Q. On first class?

A. Yes, sir.

Q. You are on the Mississippi River?

A. Yes, sir.

Q. That rate of 88 cents has been raised since the Commission made its order in this case hasn't it from 87 cents?

A. Not so far as we are concerned.

Q. Wasn't it 87 cents only before the order was made, say January 1st, last year?

A. We take the 117 per cent basis for two years.

Q. Are you sure about that?

A. We were formerly 124 per cent and now we are 117.

Q. When was your rate reduced?

A. I say about two years ago.

821 Q. Until two years ago you were 124 per cent of the Chicago rate?

A. Yes, sir.

Q. Your rate has been decreased 7 per cent off the Chicago rate?

A. Yes.

Q. That 7 per cent will amount to almost 7 cents on a hundred pounds first class?

A. It would be 7 per cent of 75 cents.

Q. About 5 cents?

A. About that.

Q. Your interests were all built up on the basis of 124 per cent of the Chicago rate?

A. To a certain extent.

Q. You were able to compete and do business on 124 per cent of the Chicago rate?

A. Within a certain area.

Q. Your business is the most diversified of any point in the valley?

A. Yes so far as numbers are concerned.

Q. All built up on that basis?

A. To a great extent.

Q. When your rate was reduced the rate of the Missouri River cities was not reduced and Chicago was not reduced and St. Louis was not reduced, so that you are much better off now than you were two years ago?

A. Admittedly.

Q. St. Louis at that time did not have the 116 or 117 per cent did it of Chicago?

A. 116 plus.

Q. Plus the cost of two cents taking it over in car loads or 5 cents in less?

A. Yes.

Q. At the same time that this 117 per cent was put in St. Louis took that rate didn't it?

A. Yes.

Q. So that your business all along has had in the last two
822 years a much greater advantage over all your competitors than existed prior to that time?

A. I would not say an advantage.

Q. Your rates have been reduced 5 cents on first class we will say within the last two years?

A. I would say nearer an equalization.

Q. Then if you put it that way you now enjoy an equalization of 5 cents which you did not enjoy prior to two years ago?

A. Yes, sir.

Q. The rates in to any given point plus the rates out from a given point the same point, to the point of consumption beyond is the rule which governs generally is always greater than the through rate as a rule? I am not speaking of exceptions now but the rule which governs transportation.

The WITNESS: Do you make that statement?

Mr. WALTER: I am asking you?

A. I cannot make that statement.

Q. Don't you understand that the through rate is less than the sum of the locals as a transportation matter?

A. Not as a rule.

Q. Let me ask you whether it is not true that the rates into

Buffalo plus the rates from Buffalo to Chicago or Buffalo to Quincy are greater than the through rate from Chicago to New York or Quincy?

823

A. Yes, but there are exceptions.

Q. Isn't that the rule?

A. I am asked to testify to things that I absolutely know. I cannot swear that that is the rule.

Q. Don't you understand that is a recognized transportation maxim that the longer the haul unbroken the less the rate per ton per mile than when the same haul over the same distance is made up of three or four separate hauls?

Objected to as not proper cross examination.

Mr. WALTER: With a breakage at each of the points?

A. The rates made up on breaking the rates makes the sum of a through rate. Now we will take the rate from New York to Denver, it is made up of the rate to the Mississippi River plus the rate to the Missouri River plus the rate to Denver. That is the through rate. The manufacturers at Quincy are obliged to pay on the basis of the 117 per cent which is 88 cents. If they ship to the Missouri River they must pay the 60 cents and if they ship to Denver they must pay the 80 60 plus whatever the rate is between the Missouri River and Denver. That is the through rate.

Q. Isn't that an exception and does it not give the railroads the greatest possible rate because it gives them the local rates between the various points on their line?

A. I presume it does in that way of figuring it.

Q. Isn't this true as an illustration, that you may load a car of coal and haul it fifteen miles and the rate per ton per mile
824 on the fifteen mile haul will be much greater than if you haul that coal 300 miles?

Objected to as not proper cross examination.

A. I think that is right.

Q. Isn't that recognized everywhere as the rule of rate making?

Objected to as not proper cross examination.

A. That is taking the short distance of the first part of the haul where I believe the carriers contend the greatest expense lies. Of course the general basis involved in rate making must require a flexibility of rate.

Q. Let me ask you this question. I am speaking of the service rendered on traffic which originates at the seaboard and is destined to Missouri River so far as the employment is concerned between the Mississippi and Missouri, is the haul any more expensive to the carriers than the same class of traffic originating at the same place carried on the same train and it may be in the same car between the Mississippi River and the Missouri River when the traffic is destined to the Pacific coast?

The WITNESS: Whether the cost is any greater?

Mr. WALTER: Yes.

Objected to by Mr. McHugh as not proper cross-examination.

825 The WITNESS: Between the Mississippi and Missouri River as compared with between the Mississippi and the seaboard?

Mr. WALTER: No, is there any greater cost on the traffic moving between the rivers when the traffic originates at the seaboard and is destined only to the Missouri River and when it originates at the seaboard and is destined to the Pacific Coast terminals? I am speaking now of the employment between the two rivers?

Objected to by Mr. McHugh as not proper cross-examination.

A. You are asking me something that I do not know anything about. I do not know the technical points of the railroad costs.

Q. Can you see any difference in cost at all in the two traffics?

Objected to by Mr. McHugh as not proper cross-examination.

A. I scarcely know how to answer that so as to answer it truthfully.

Q. You are doing business down in Texas common points?

A. Yes.

Q. In competition with seaboard business, that is shippers from the seaboard?

A. Yes.

826 Q. Do you know that they get a much less rate between the Rivers on the traffic which they carried than that which you ship to the same points between the rivers?

The WITNESS: The eastern people get a lower basis?

Mr. WALTER: Yes on that business which goes to Texas common points.

A. Not to my knowledge.

Q. If there is any difference it does not affect your business at all that you are aware of?

A. It is affecting it at the present time.

Q. Do you know of any business that has been affected by any disparity in rates to that point?

The WITNESS: To Texas?

Mr. WALTER: Yes.

A. Yes it is affecting it today.

Q. In what way?

A The effect of the water competition from the Central Freight Association territory—

Q. I am speaking from the seaboard territory.

A. That would carry it to the seaboard territory. The rates from the seaboard to Texas points are lower than the all-rail from the Mississippi valley to Texas points and consequently these people have the advantage.

Q. Didn't you say a moment ago that you did not know of any disparity?

A. I am speaking now of the competition as between water and rail.

Q. Let me ask you about Oklahoma common points by rail?

A. I don't know whether that reaches Oklahoma.

827 Q. What about Montana common points?

A. That is all rail. That is made up on the sums of the

locals.

Q. I am asking you whether you know of any business from Quincy that has been in anywise impaired by any difference in the rate as a division or proportion when the traffic originates at the seaboard and is brought to these Oklahoma common points or Texas common points or Utah common points or Montana common points as compared with the rates between the rivers going to the same destination?

A. I cannot say that I know but I can say that I believe that if this lower combination of rates comes in the effect with the eastern manufacturers and jobbers will be that they will be enabled to meet competition to the detriment of these Mississippi valley people by reason of the reduction in this rate.

Q. You do not know of any detriment suffered by the Quincy manufacturer jobber or shipper by reason of any other difference in the rates between the rivers based on the same principle do you?

A. There has been no reduction as yet.

Q. I am speaking now as to the particular situation existing. I would like to have that question repeated so that you can answer the question just as I put it to you.

A. I would like very much if I could.

(The question was repeated.)

828 A. As I answered before I do not know whether there are any reduced rates which have been applied as yet. The scale of rates has remained as it is for so long that I do not know where to think that there has been a reduction.

Q. You do not know what the rates are or what the effect of the rates has been as compared with the business which you do and which your competitor from the seaboard has done into the territory I mentioned, Oklahoma common points, Texas common points Idaho common points and Montana common points?

A. Only in a general way.

Q. You don't know?

A. I could not answer for each manufacturer.

Q. And you cannot answer for them as a whole because you do not know do you?

A. I won't admit ignorance to that extent. I will apply it as a general proposition.

Q. That is only your opinion?

A. Yes, sir.

Q. But you don't know what the facts are?

The WITNESS: What do you mean by facts?

Q. The concrete effect on the shippers there as compared with their competing shippers from the seaboard territory to these points?

A. I have previously said that if these reduced rates are put into effect—

Q. I am not speaking of that.

829 The WITNESS: So there will be a differential then there will be some cases in which the eastern shipper will have a

basis lower than can be obtained by a central valley shipper but as long as the rates remain as they have been for several years past you are asking me to give you some specific case and I cannot think of it because I don't know of a change in the rates.

Q. Leave out entirely from your mind this proposed order of the Commission, just ignore it, suppose it is never made, do you know of any adverse influence upon the Quincy business in the four territories I name as compared with the business from the seaboard to those points, as the result of any difference in rates?

A. No I do not.

Q. That is all on that. 124 per cent of the Chicago rate was based on all the six classes?

A. Yes, sir.

Q. You did business in competition with the seaboard shipper and all other places in this country on which the business was built up, you paying 124 per cent of the Chicago rate. Now you say you are paying only 117 per cent. During all that time your people have sold goods in competition with seaboard shippers and all other shippers for that matter in all points in which they did business then and do business now?

A. You forget that the east had 116 per cent proportional rate to the Mississippi River while Quincy paid 124. They had
830 the advantage of us.

Q. You did business, prospered with that handicap?

A. We prospered to a certain extent but not to the extent that we should have.

Q. Under that arrangement of rates as based on 116 compared with 124 you did a successful business and Quincy has mounted to as you say the largest manufacturing city north of St. Louis in the Mississippi valley?

A. Yes sir. It seems to me that the way you place that question, if you will pardon me, is rather to place us on the defensive in this matter in regard to the Mississippi valley basis, for it should be considered that trade from the east as related to the Mississippi river has its natural confines in the competition. The distributive rate from the manufacturing industries in the east to points in the west in former years was a matter of necessity and made a basis of the proportions or percentages on the Chicago basis so as to distribute the various lines of products; but I doubt if very many of the jobbers in the last twenty years have been able to get very much west of the Indiana and Illinois state line; but the manufacturing supplies have been sent to all points; but the east for years enjoyed the 116 per cent up to the Mississippi River plus the same rate west that we had to pay, where we had to pay 124 per cent, and therefore the east had the advantage of us in the manufacturing distribution. Now if this order goes into effect it will permit another element to come into the west and that is the jobbing interest that by reason of having a lower rate from the Mississippi River to the Missouri River will not only be able to meet the manufactures but I think jobbing interests where they have not been able to before.
831

Q. In other words you want to limit the number of people that can do business in the Missouri River cities by shutting out the jobber?

A. Oh no.

Q. Do you think it would be fair that the Buffalo shipper who buys his goods we will say in New York, has them shipped in to him on a rate should be allowed to ship out his goods to Chicago or to Milwaukee on the same rate as the New York man who ships direct to Chicago or Milwaukee?

A. If there is a parity basis it harms no one.

Q. What do you mean by a parity basis?

A. If New York can meet the Mississippi river we will say on the 116 per cent basis—

Q. That is not the question that I asked you.

Mr. McHUGH: Finish the answer.

The WITNESS: And Buffalo reaches it on we will say 85 per cent of that basis that establishes a parity and I don't see any injustice there.

Q. Suppose the rate from New York to Buffalo is 30 per cent of the rate to Chicago do you think then that Buffalo should be allowed to ship its goods from Buffalo to Chicago on the remaining 70 per cent of the New York Chicago rate?

A. That is a different proposition.

Q. Just say whether you think they should or not?

A. I think not.

Q. Can you tell me the output of Quincy of any particular business interests which goes into the Missouri River valley?

The WITNESS: Do you mean the particular lines?

Mr. WALTER: Yes, sir.

A. Very largely of stoves.

Q. Give me one manufacturer and what he sells in the Missouri River valley?

A. I don't remember. I have never asked one of them for the amount of their sales.

Q. Can you tell me any particular interest at Quincy that has a market in the Missouri River cities, and give me the amount of that business?

A. I have never asked for such a statement because I did not know that I should be asked about it. If I had I should have very gladly collated that information.

Q. You cannot give me at all can you the amount of business which will be affected by this order?

A. Approximately—

Q. I want to know of your own knowledge?

A. Oh, no. I would have to gather statistics for that.

832 Q. You cannot tell me what the profit of those men who do business at Quincy was can you?

A. I don't know anything about their business as individuals. I represent them as a whole in a representative capacity.

Q. You cannot tell me whether it would affect the amount of business at all that is done at the Missouri River cities?

A. In my judgment it would.

Q. You are only speaking now aren't you of the difference in profit on the business measured by the difference in the freight rate?

A. I am speaking of the difference in the competition under the new elements that will be permitted to come into competition.

Q. Isn't it solely a difference in profits received under the one basis of rates and the profit received under another basis?

A. It will amount to and be represented by the cost of assembling and distributing. For example we will take fine shirts that are made quite largely in Quincy and in New York, just to illustrate, the New York man sells f. o. b. New York and we will say sells to Denver—

Q. Take Missouri River cities. The only rate reduced was to Missouri River cities?

A. It follows New York but we will take it to Missouri River points. Combinations are made up on Missouri River points. The New York manufacturer will say to the Missouri River customer and in the territory where these things extend, we can deliver your freight or rather ship your freight at a cost of 9 cents a hundred less than you can buy from we will say manufacturers on the Mississippi River. Now how is that accomplished? The manufacturer at Quincy must bring in the materials necessary for the manufacture of we will say fancy shirts and pay the rate which I believe is first class, and that would be 88 cents. He must then ship it to the Missouri River and points basing on the Missouri River which would cost 60 cents. That would be \$1.48. Now the eastern shipper or manufacturer says to the man on the Missouri River and in that territory our rate would be 87, if that is the basis, plus 51, \$1.38. Now do you want to save that 9 cents a hundred? Certainly. Where does the interior manufacturer come in in this deal? He must pay that freight musn't he? He must do that to his cost. He cannot recoup because he must meet the price of the New York man. By the time he gets it laid down on the Missouri River it has cost him \$1.48 as against the New York man or the eastern man \$1.38.

Mr. FYFFE: \$1.39.

A. If you insist it is 88 cents. I take it it is 116 per cent which would be 87. If you say 88 cents we will figure 88 cents which will make it cost \$1.39. Now the Mississippi Valley manufacturer must pay the 88 cent rate, and his customer must pay the rate from Quincy we will say to Missouri River points. That makes \$1.48 and the eastern man has \$1.39. Isn't that going to affect this business?

Mr. WALTER: When the man at the Missouri River buys his shirts he knows he has got to pay the New York man \$1.39 we will say on the Commission's order?

A. Yes.

Q. When he buys of you he only pays 60 cents a hundred pounds?

A. Yes. That is between the Mississippi and Missouri Rivers.

Q. That is the only freight he pays is, the 60 cents Quincy to Kansas City Missouri or St. Joe?

A. That is the only freight he pays from Quincy but he has to pay in the price of the goods the freight from New York to Quincy. The manufacturer does not give that away.

Q. Don't you know that this is the true way of doing business when you sell to a retailer or to a jobber that he sees the freight rate that he has got to pay?

A. Yes.

Q. And he compares the 60 cents that he pays with you with the \$1.39 under the Commission's order or the \$1.47 or \$1.48 under the existing status, he compares these two rates doesn't he?

A. No, I would not answer that way.

Q. Do you know what he does do?

836 A. As represented to me from some little experience on the road I will say that I do know.

Q. How long ago were you a traveling salesman?

A. I have never been a traveling salesman but in my own business I used to go on the road occasionally.

Q. Did you deliver your goods f. o. b.?

A. At Quincy.

Q. And the freight was taken care of by the purchaser?

A. The purchaser paid the freight.

Q. And he only saw the rate from Quincy to Omaha didn't he?

A. Yes sir. It must not be lost sight of that the manufacturer on the Mississippi River must pay the rate of 88 cents and add that to his price. Now let me illustrate, supposing that an article cost a dollar in New York, just to get simple figures, the freight on that was 88 cents from New York to the Mississippi River. That would cost the manufacturer at the Mississippi River \$1.88 wouldn't it Now he sells it at the Missouri River which costs 60 cents more and it makes \$2.48. The eastern man sells the goods at a dollar in New York plus the freight, but he would say under this new ruling we can deliver this at a cost of 9 cents per hundred less than it would cost you to buy it from the Mississippi river manufacturer. That is true.

Q. Where do your supplies come from for your Quincy people, raw material?

A. From the east, from the south and from the north

Q. And from the west?

837 A. From the extreme west canned goods and things of that kind.

Q. You know this don't you that the same materials which go to make up the manufactured article, take for example white lead, if it is used by the seaboard man he has got to haul it all the way from Kansas we will say to New York, convert it and ship it back west, isn't that true? And he pays the freight on it to New York and the freight on it out while you only pay it into Quincy and from Quincy out, isn't that true of raw material originating in the valley?

A. If such was done.

Q. That is the advantage you have by reason of your location geographically nearer to the source of supply of raw material, isn't that true?

A. Not all.

Q. Isn't it true in part then?

A. So far as it applies, yes.

Q. So far as the New York man is nearer his source of supply the raw material he has the advantage over you?

A. Yes.

Q. That is true of the manufacturing business everywhere isn't it?

A. Presumably.

Q. So that what one man has an advantage of in his raw material the other man may have an advantage of in the finished material?

A. Naturally.

Q. And competition in the consuming market is based upon that existing fact, that is true isn't it?

838 A. I should place limitations upon that, governed by territorial conditions.

Q. Because there are some articles that cannot be carried a long ways?

A. Yes.

Q. You cannot tell me a single firm in your place by name and give me the amount of loss which this reduction by the Commission's order will make can you?

A. I cannot today. If I had been asked for the information I could have asked some of the principals.

Q. It would be pure conjecture wouldn't it?

A. At the present time it would be pure conjecture.

Q. You come here with a purpose in view of giving such testimony as will defeat this order don't you?

A. I should say modify it.

Q. Don't you know that under the law the court cannot modify the order?

A. I am not versed in the law.

Q. If it be true that they cannot modify the order, that it either stands or falls as a whole do you say that the order should fail, do you want it to fail?

A. I have the profoundest respect for the opinion and decisions of the Commission and shall support and uphold them in so far as any man can do and if I should make a statement I would ask the Commission to re-hear this case and consider it with regard to the conditions which apply to the localities affected.

839 Q. You never have done that have you?

A. No, sir.

Q. You never have taken the first step looking to any action by the Commission to modify that order so far as it affects or as you think it may affect the Quincy interests?

A. No, sir.

Q. Let us take a supposititious case. Suppose that the man from New York who ships goods to the Missouri River cities has for fifteen years, for twenty-five years, been paying ten cents more than was a just and reasonable rate on the products he shipped and suppose the Quincy man has been paying all that time only a just and reasonable rate would you oppose a reduction of the New York Missouri River rate to a just and reasonable basis?

A. Not to a just and reasonable basis no.

Q. So that your position is that just and reasonable rates should

prevail between all points regardless of the effect it may have on the business?

A. Yes sir I uphold a just and reasonable basis.

Cross-examination.

By Mr. Atwood:

Q. Prior to the reduction of the rate from 124, Chicago rate to 117 or 118 as the case may be, which took place two years ago—

I direct your attention to the situation as it was from a rate standpoint prior to this reduction, and with that situation in mind I want to ask you what the in and out from the seaboard to Quincy and Quincy to the Missouri river came to in dollars and cents per hundred weight first class?

A. Ninety-three cents.

Q. In order for the person situated at Quincy to receive goods from New York at Quincy and there after treating them or otherwise to trans-ship them to the Missouri Valley, that is to Missouri River points he would have to pay first 93 cents and then the rate from Quincy to the Missouri River?

A. Yes, sir.

Q. That is 60 cents?

A. On first class.

Q. In order to avoid complications we will speak of first class alone?

A. All right.

Q. That made \$1.53 that it cost him?

A. Yes, sir.

Q. What was the through rate from New York to the Missouri River points at that time?

A. \$1.47.

Q. And the difference was 6 cents?

A. That would make 6 cents difference.

Q. There was that differential to the disadvantage of Quincy of 6 cents, during the time that Quincy has been builded as a city?

A. Yes, sir.

Q. For I apprehend that the past two years has not made any pronounced difference?

A. No the past twenty years has not, because Quincy has not grown under this handicap.

Q. During that time this difference has been 6 cents as our figures show?

A. Yes.

Q. Now the present rate to Quincy is how much, from New York?

A. 88 cents.

Q. From Quincy to the Missouri River?

A. Sixty cents.

Q. Making how much?

A. \$1.48.

Q. What is the proposed reduction?

A. Nine cents off.

Q. Making a difference of 9 cents?

A. Yes.

Q. Subtracting your 6 cents difference from the 9 cents difference the situation that the new rate or proposed rate established as distinguished from the rate that existed for many years prior would show a difference of but three cents a hundred weight first class?

A. Yes.

Q. As I understood you and I do not desire to annoy you by constant repetition, but to be exact, you have not such a knowledge of the profits made by the different businesses in Quincy as to know what effect on the question of determining whether they could continue in business or not this difference of 3 cents would have?

A. I do not know as to the profits.

Q. Of course we all know if we get 3 cents per hundred pounds less for anything there is so much less profit. Of course if a man's profits are quite large that much diminution would not prevent his continuing to do business?

A. No.

Q. While if it was very close it might drive him out of
842 the market?

A. Yes.

Q. You are not sufficiently familiar as I understand with the profits made by the different manufacturers to know whether that would make any difference in the matter of their remaining in these markets?

A. I cannot answer that.

Q. Of course they would make less?

A. It naturally follows. May I make another statement?

Mr. ATWOOD: Certainly it is your privilege to explain anything.
Go on.

The WITNESS: Mr. Walter brought out a question that as I think of it more I think I ought to amplify a little bit on, and that is whether the manufacturers particularly at Quincy, manufacturers and jobbers, at Quincy have not benefited by this condition and also how it came about that they prospered so much under the old condition of rates prior to the reduction to the 117 per cent basis. I think it is only just to say that up to about 1887 Quincy enjoyed the 116 per cent basis. When the rate was then advanced about the time the Interstate Commerce law went into effect to 124 per cent, and I believe I can safely and truthfully say that since that time up to four years ago approximately or during the twenty years there was no increase in the location of manufacturing industries in the city of Quincy. The growth was about that of the natural
843 growth. The city grew only 15.2 per cent or 15.4 per cent according to the census reports, from 1880, to 1900. Manufacturers looking for locations coming to Quincy and ascertaining that it had such a high rate in-bound would not locate in Quincy but go elsewhere. Therefore the manufacturers and jobbers of Quincy, through this organization of theirs, the Quincy Freight Bureau, requested a reduction in that basis because of natural conditions and because of the fact that Quincy had not grown propor-

tionately with any other city of its size or rather relative importance in the State of Illinois nor in keeping proportionately with Chicago or St. Louis, and it was attributed so far as we could see to the existence of this higher basis of rates in-bound. Now we have scarcely had time since it was taken off to see the benefit that may be derived because of its reduction to 117 per cent. I feel without this explanation that some things that I may have said in the endeavor to answer your questions might be subject to a wrong construction and I wish to emphasise this point that during the existence or the term of duration of the 124 per cent basis Quincy did not add to its manufacturing industries in any degree proportionate with points having a less basis, and that those establishments that builded up the city were institutions that in a major portion had been established prior to 1886.

844 Recross-examination.

By Mr. WALTER:

Q. When was that reduction from 124 per cent to 117 made?

A. I said about two years ago.

Q. Wasn't it the first of January 1908?

A. No sir, I think it was in June 1906 or '7. I have forgotten which.

Q. Which is your best judgment, '6 or '7?

A. I think it was in 1907 anyway it might have been 1906.

Q. I believe you say that you are not able to state what material progress the reduction of that rate has caused upon the business interests of Quincy?

A. I do not think it has had time yet to work its effect.

Q. You still stand by your proposition that Quincy is the first and foremost manufacturing city in the Mississippi valley north of St. Louis?

A. In the diversity of articles made, and in some of the lines, but I think in the aggregate of articles made that Quincy is the largest manufacturing city in the Mississippi River valley north of St. Louis. I do not mean in dollars and cents.

Recross-examination.

By Mr. ATWOOD:

Q. Do you know the New York Rock Island Moline & Davenport rate the tri-cities?

A. I can tell you the percentage I do not know the rate.
845 I will have to figure that. 122 per cent isn't it?

Q. Whatever it is. I think that is so. I had in mind that at least for many years it was approximately the same as Quincy?

A. Yes, it was 122 to our 124 I think.

Q. As a matter of fact those towns, the industries there, the Deere people and the Moline Plow Works and the like have grown tremendously in the last twenty years?

A. A few of those lines.

Q. You spoke of the leading manufactures in Quincy. I think you spoke of stoves as one?

A. Stoves.

Q. Stop right there in order to get rid of that before *me* speak of any other. The raw material comes in under commodity rates doesn't it for stoves?

A. Yes sir. That is the pig iron and coke does.

Q. The larger part?

A. Yes.

Q. The bulk of the raw material in stove manufacture comes in on commodity rates?

A. Yes sir.

Q. So an in and out on the first class freight New York to Quincy and Quincy to the Missouri River would not be a fair way of measuring the freight totality?

A. You would have to measure by the rate that would apply.

Q. The next leading manufacture?

A. Show cases.

Q. The raw material there is lumber and glass?

846 Q. The glass is gotten where?

A. The east.

Q. Do you mean Pennsylvania and Indiana?

A. I do not know whether there is any Indiana glass. I think there is some Indiana glass but Pennsylvania largely. I think some from New York besides the importations.

Q. The rate on the raw material, glass and lumber, whatever it may be is considerably less than that on show cases as a manufactured product?

A. Yes.

Q. Do you know whether show cases move as first class or not?

A. They take first class. It depends on how they are packed, first or double first.

Q. And the rate on lumber of course is not other than a commodity rate?

A. No, that takes lumber rates from the south. They get the bulk of their lumber from the south.

Q. Do you know what glass when packed for shipment, not as part of a manufactured article like a show case, but glass as the product of the glass factories, takes, what rate?

A. I would have to look at the classification. I do not know what it takes.

Q. My friend says it is fifth class car load lots.

A. I was going to say fifth.

Q. Of course the in and out on a fifth and first could not be measured by the in and out on a first and first in comparing it?

A. Not comparatively naturally.

847 Q. What is the next leading manufacture there?

A. Incubators.

Q. What is the raw material?

A. Wood glass metal.

Q. And the situation is tantamount to that which was the situation as to the show case so far as freight conditions are concerned?

A. The assembling yes.

Q. Is the red oak or live oak or some such name as that one of the Quincy Stove brands?

A. There are some oaks there, I don't know how many names they have got.

Q. Do you remember the leading brand of stoves?

A. They all have their names. There are about eleven factories there. The Economy stove is known very largely, the old Economy made back in 1847.

Q. The only fact that I want to direct your attention to is this in this connection, not that we are particularly interested in the names but isn't it a fact and do you know whether or not it is a fact that when a brand of stoves has been established by common reputation as being a thoroughly reliable article it is sold very largely upon its name and the reputation that it has acquired under that name?

A. Formerly. Names do not count as much today as they did formerly.

Q. Formerly is rather an elastic term. How far back do you mean to carry that?

A. I would carry that back fifteen years.

848 Q. You think today the brand of stove or name by which it is sold has little or nothing to do with the price that may be obtained for it?

A. I think the price is a competitive price largely.

Q. That is not quite the question. The question is whether or not in your judgment the reputation that the stoves may have acquired under a certain name has anything to do with determining the price at which it may be sold?

A. I think it enters in as a factor. I do not think it is the determining factor.

Q. Do you have any competition from Indianapolis in your Missouri River trade?

A. I believe so.

Q. Peoria?

A. In implements Peoria would be a competitor, yes.

Q. That is enough for the thought that I have in mind. Do you know how the in and out rate from the seaboard and Indianapolis to the Missouri River and the seaboard and Peoria to the Missouri River compare with the in and out from the seaboard to Quincy and the Missouri River?

A. Peoria has 110 per cent out and it has in some commodities a special basis out.

Q. I am asking about first class now?

A. The assembling at Peoria would be 110 per cent. in.

Q. How about out?

A. They have their regular tariffs out, made up on combination with Mississippi River.

849 Q. Do you remember how it is from Indianapolis?

A. No I have not examined it.

Q. Do you recognize or have you a full recollection of the rates and recognize the fact to be that you are at a pronounced advantage over Peoria or Indianapolis to the extent of from 6 to 9 cents?

A. I have never so figured it.

Cross-examination.

By Mr. WEBSTER:

Q. Do you think stoves constitute the principal manufacturing interests of your town?

A. It is probably the largest single industry.

Q. The raw material that enters into the stove is chiefly pig iron?

A. Yes pig iron coke coal some bar iron and nuts.

Q. That material chiefly comes from Western Pennsylvania and western mines?

A. Pig iron comes principally from the south, some from the Lake Superior region I think and some from South Chicago.

Q. That is not material that comes from the Atlantic seaboard?

A. No.

Q. So that you are not concerned with the Atlantic seaboard rates so far as getting in that raw material is concerned. That being your chief interest you therefore have got to eliminate entirely the Atlantic seaboard rate in on that material. Now what is your next chief interest?

A. I beg your pardon.

Q. Just answer my questions now and when I am done you can say all you want to?

A. I want to get a better idea. I want to get the matter straight. Do I understand you—

Q. You answer the question I have asked you?

A. I think the difference in rates would cut a figure in the price of the stoves.

Q. Now what is your next chief interest?

A. Show cases.

Q. In show cases your chief material is woods and glass, woods of different kinds according to the kind of a show case you make?

A. Yes some metal.

Q. Your woods come from where?

A. From the south principally I understand. They come from the west too.

Q. Then you pay the freight in from the west and if you ship the manufactured article to the west you pay the rate out again?

A. Yes.

Q. That rate however is not a rate from the Atlantic seaboard but a rate in from the west and on the manufactured product west provided the manufactured product goes west?

A. Yes, west and south.

851 Q. That rate out depends entirely upon where your manufactured show cases go?

A. Yes, sir.

Q. Do you know the amount of business done by any man engaged in manufacturing show cases?

A. I have never asked that question of either of them.

Q. Do you know the quantity of sales of show cases made by your manufacturers of show cases in any town or city in the United States?

A. I do not. I know nothing of their sales or profits.

Q. Do you know anything about the quantity of show cases sold by your houses in Kansas City?

A. No not specially.

Q. Do you know anything about their show cases if any sold in St. Joseph?

A. I think they have trade there.

Q. Do you know anything about it?

A. Not personally.

Q. Do you know whether they sell any show cases in Omaha or not?

A. They sell there but I cannot say of my own knowledge to whom.

Q. Do you know as a matter of fact whether in the sale of show cases in either of the towns that I have named they come in competition with any other house manufacturing show cases?

A. Yes, sir.

Q. Will you name the house?

A. No I cannot. They tell me that they do.

Q. I am asking you for facts not for a lecture or speculation. We can all speculate?

A. Yes, sir.

852 Q. I am asking you to give me facts now. Do you know of any house that is in actual competition with any manufacturing house of show cases in Quincy selling goods in Kansas City St. Joe or Omaha?

A. I will name three of them that I will say are.

Q. Name the three houses?

A. I will say that the Knittel Show case factory the Quincy Show Case Works and the Huck Manufacturing Company I believe are in competition at Missouri River points with manufacturers elsewhere.

Q. Are those three manufacturing houses you speak of in Quincy?

A. Yes.

Q. You say believe. I ask you if you know as a fact. Do any one of these three houses you have named, as a fact sell goods in any one of the three towns I named in the Missouri River valley?

A. Not of my personal knowledge. The details with regard to their sales profits and so forth are matters that are private so far as I am concerned and I never asked regarding them as a principal of a business would know or expect to know. I simply take in view the general territorial situation with regard to the distributing of the freight. Where they sell, to whom they sell, what their cost is, their profits are questions that do not enter into the consideration of the organization that I am connected with, consequently I can-

853 not answer those technical points that a principal in a business would do and which I would gladly give you if I had the knowledge.

Q. That lecture is entirely foreign to what I asked you. I only ask you as to the fact of sales being made by any one of these three houses in Kansas City St. Joe or Omaha and I ask you nothing about the profits whether sales are made there is not a question of technical knowledge but of actual knowledge. Do you know or not?

A. No.

Q. Then you do not know that any other manufacturing house of show cases in the world comes in actual competition with these three houses you have named, in Kansas City St. Joe or Omaha do you as a fact?

A. As a general proposition yes. As to personal knowledge no.

Q. As a fact you don't know do you?

A. Yes I know as a man knows anything, that they must come in competition.

Q. How can that be unless you know as a fact that those three houses that you have named in Quincy are selling goods in Kansas City St. Joe and Omaha?

A. Because the market is open to competition of everybody.

Q. Let me ask you, do you know that Mr. Atwood is practicing law in Quincy simply because the courts at Quincy are open to him as an eminent lawyer if he wants to go there?

854 A. I don't know as to the eminence of Mr. Atwood.

Q. If you don't know about show cases being sold in the Missouri River towns let us pass to incubators. Is that one of the next principal manufacturing industries of Quincy?

A. Yes, sir.

Q. Where are those incubators sold if you know?

A. Generally throughout the United States?

Q. When you say generally throughout the United States let me ask you are they sold in the state of Illinois?

A. I believe so.

Q. Are they sold in Chicago?

A. I assume so.

Q. Are they sold in Missouri?

A. Naturally.

Q. Are they sold in Indiana?

A. I have no doubt of it.

Q. And Ohio?

A. All over the United States.

Q. And Michigan?

A. All over the United States.

Q. And in New York State?

A. Generally.

Q. Then you can manufacture incubators way out west in Quincy and you can ship them back as far as the State of New York in competition with manufacturers of incubators in New England States if any there be?

A. I presume so. It seems so.

Q. Then the fact of the Atlantic seaboard rate don't prevent you from getting raw material and manufacturing incubators and sending them down to the Atlantic seaboard in competition with those manufactured down there if there be such?

855 A. They must meet the competition.

Q. Do they do it?

A. I am talking from general knowledge that they do.

Q. Do you know as a fact that your houses in Quincy sell an incubator in Kansas City?

A. As a fact no.

Q. Do you know as a fact whether they sell an incubator in St. Joseph?

A. I do not.

Q. Do you know as a fact whether they sell an incubator in Omaha?

A. As a fact no.

Q. Passing the incubator business let us go to another. What is your next?

A. There are steam pumps governors air compressors, straw board Egg-o-see cereal iron wheels shelving overalls and shirts cereal products of flour.

Q. Commence at the last end and go back. Take flour. You mean by that mills do you simply for grinding the wheat into flour?

A. Yes.

Q. That wheat comes from where?

A. Kansas Missouri Iowa Illinois.

Q. Sold where?

A. Their principal market I think is export and southeast and some New York.

Q. You bring in your wheat from the west and you do not pay them the freight from the Atlantic seaboard to your place when you purchase that wheat, so that is to be eliminated from this consideration.

856 Mr. ATWOOD: That is all moved by commodity.

Mr. WEBSTER: Yes that we will understand. Take your cereals the raw material comes from where?

A. Some of it from the state of Washington. I think they use some Dakota wheat. Corn of course is local.

Q. You said your flour nearly all went abroad?

A. I said export may be the largest in flour.

Q. Your cereals the raw material for your cereals don't come from the Atlantic seaboard?

A. No.

Q. So you have got to eliminate your in rate from the Atlantic seaboard on your cereals?

A. Yes, sir.

Q. Where do you sell your cereals do you know?

A. New York that is generally east Central states west more largely than the south.

Q. So that you scatter that all over the state of Illinois Ohio Michigan Indiana and everywhere?

A. Yes.

Q. Even down as far as Washington and the Atlantic seaboard.

A. Oh yes.

Q. So that so far as your cereals go you can ship them east in competition with eastern manufacturers if any there be?

A. If any there be yes.

Q. So that the eastern manufacturer if any there be would
857 have to ship his manufactured product from New York out to Quincy and then pay the freight on it from Quincy out to Missouri River in competition with your people if he comes in competition at all?

A. Yes if there was such.

Q. So that in the sale of cereals then in the west and likewise in the sale of stoves in the west and of show cases in the west and incubators in the west you do have an advantage more or less by reason of the fact that your factories are in the west and you get the greater part of your raw material in the west?

A. In so far as that applies yes.

Q. Now take the Shredded wheat as one of the cereals, do you know of a factory at Niagara Falls?

A. Niagara or Buffalo.

Q. Do you manufacture shredded wheat in Quincy?

A. No it is corn flake and Egg-o-see.

Q. Do you recognize shredded wheat as among the class of cereals?

A. I believe it takes the same classification.

Q. Let us pass along to something else. I have covered now pretty near everything that you talked about chiefly. You mention steam pumps. The raw material for your steam pumps consists in what?

A. Steel brass copper, polished steel, cast iron. I am not a manufacturer in that line and I will have to speak generally as to
858 the particulars.

Q. The great proportion of that raw material comes from where?

A. Iron from the south. I guess they use Lake Superior too. Some of the steel I think they buy in the east, the Pittsburg region. They gather it where manufacturers usually gather these things.

Q. The long and short of that is that the raw material that enters into that kind of manufacture comes from the interior of the country, from Michigan on the north and western Pennsylvania and on down south?

A. Yes, sir.

Q. That is not Atlantic seaboard business, that raw material?

A. No.

Q. So that in that class of manufactured goods you have the advantage over the manufacturer of the same kind of goods on the Atlantic seaboard if any there be?

A. I don't think we have.

Q. You have to the extent of the difference of shipping that raw material to the Atlantic seaboard and returning it to the place from which you get it do you not?

A. To that extent.

Q. To that extent Quincy has an advantage over the Atlantic seaboard man in the western trade?

859 A. Yes if there is any difference. That would require figures to develop.

Q. Do you know anything about the sale of your pumps as a fact, in the western territory?

A. When you ask me as a fact I shall have to surrender. I do not know as a fact. I simply know in a general way.

Q. Then without spending much time about it we come down to this do we not, as a mere matter of fact that you don't know the percentage of the manufactured product of any manufacture in your town that is sold in the State of Illinois the State of Indiana the State of Michigan or that passes west of the Mississippi River?

A. No sir that is technical knowledge. I do not possess it.

Q. You do not know the amount of the sales of any one of these manufactured products west of the Mississippi River?

A. No sir that is technical knowledge.

Q. You do not know therefore the amount of their profit on that business west of the Mississippi river?

A. No sir that is technical.

Q. You do not know the amount of loss if any there would be on that business west of the Mississippi river?

A. That would be a matter simply to be figured. I cannot answer it without taking time.

860 Q. Therefore that always would depend upon the amount of goods that were sold west of the Mississippi River the percentage of profit on that business, and ultimately whether any of those goods have heretofore been sold in any of those western towns or not as a fact?

A. Yes sir in connection with the relation of rates.

Q. It would depend upon another fact also would it not, whether there was in fact any other house actually selling goods in these western towns in competition?

A. If there were such.

Q. All these facts?

A. Yes.

Q. None of which facts you are prepared to give us today?

A. I cannot do it now. I could obtain them for you if you desired it.

Q. You come here and volunteer your services. We did not ask you to come did we?

A. No sir. I should have been very glad if you had.

Q. You volunteered to come here did you not and tell us facts for our information?

A. Yes sir.

Q. Then it for you was it not to get the facts and not for us to post you in the first instance?

A. I was not coached or I would have gotten them. If it is desired I shall be very glad to appear again.

Adjourned.

861 On February 19, 1909, at ten o'clock A. M., the parties met pursuant to agreement.
Present as before.

EDWARD B. BOYD, a witness produced sworn and examined on behalf of the complainants deposed as follows:

Direct examination.

By Mr. McHUGH:

Q. Give your full name?

A. Edward B. Boyd.

Q. Where do you reside?

A. Chicago.

Q. What is your business?

A. I am assistant to the Vice President of the Gould lines so-called, Missouri Pacific, Texas Pacific, Denver and Rio Grande.

Q. What railroad experience have you had and where?

A. I commenced in 1883 with the Rock Island, from clerk up to chief of the tariff department for ten years and assistant General Freight Agent and then General Freight Agent, two years of which time I spent in Topeka as General Freight Agent of the lines west of the Missouri River. The remaining period of time until 1904 I was in Chicago. After that I went to the Board of Trade as Traffic Manager or manager of the Transportation Department in October 1904, and remained there until January 1, 1908. I have been in my present position since.

862 Q. In your present position you have been located at Chicago?

A. Yes.

Q. Your work is in connection with these western lines?

A. Yes, sir.

Q. So all your railroad experience has been over the lines in the west?

A. In the west.

Q. Then in your railroad experience your work has been entirely in the line of the traffic departments?

A. Yes sir.

Q. Particularly with reference to the rates?

A. Yes sir.

Q. As manager of the rate department of the Rock Island Railroad what were your duties with respect to rates?

A. To promulgate all tariffs to attend meetings where rates were made, and check up, and carry out the rate construction to its final conclusion and publication in a tariff.

Q. You are therefore familiar with the status and the history of the rate situation in this country?

A. I am since my advent in the business.

Q. You say that from October 1904 to January 1908 you were with the Chicago Board of Trade. In what capacity?

A. As manager of the transportation department.

Q. In that position what were your duties and functions?

863 A. To look after the interests of Chicago with respect to rates on commodities handled by the Board of Trade, and see that equalization of this market was always kept in view by the roads in the construction and maintenance of their rates.

Q. So that during that period your work with reference to rates was with reference to them from the standpoint of the shipper?

A. Yes, sir.

Q. So that you have had the railroad experience in connection with the rates and in connection with the railroads making them, and the experience as representing the large shippers in Chicago of commodities handled by the Board of Trade, considering rates from the standpoint of the shipper?

A. Yes.

Q. You are familiar with the various railroad systems of the country, their location?

A. Yes, sir.

Q. What systems of railroads reach from the seaboard territory to the city of St. Louis?

A. The Pennsylvania system, the New York Central lines, the Baltimore & Ohio system, and as connecting roads forming a line, the Chesapeake & Ohio and the Big Four, New York Central and Big Four is all one, the Erie and its connections, the Grand Trunk operating through Chicago to St. Louis in connection with the lines from here to St. Louis.

Q. The lines of the railroads of these systems that you mention extend from the seaboard to St. Louis and terminate at St. Louis?

864

A. Yes, sir.

Q. What railroads begin at St. Louis and extend westward?

A. There are what we call through lines and Missouri River lines. The through lines are the Missouri Pacific, the Rock Island, the Burlington, the Frisco, and I might say the Missouri Kansas & Texas. They are southwesterly of course but they take in some of Kansas. They are the local lines, Missouri River lines, the Alton, and the Wabash.

Q. The Alton goes to what point on the Missouri River?

A. Kansas City.

Q. The Wabash goes to what point on the Missouri River?

A. Kansas City and also to Omaha.

Q. What railroad systems reach from the seaboard territory to Chicago?

A. New York Central lines, Pennsylvania lines, Baltimore & Ohio, Erie, direct lines, through lines. Then there are lines like the Delaware Lackawanna & Western, the Lehigh Valley, in connection with the Wabash. Then there is the Grand Trunk and its connection with the Central Vermont and R. W. & O.

Q. Do the lines of railroad of these systems terminate at Chicago?

A. Yes, sir.

Q. Are there railroads beginning at Chicago and going west and southwest and northwest?

A. Yes, sir.

Q. What lines?

865 A. Northwest there is the Wisconsin Central, the Milwaukee, the Northwestern, the Great Western, the Burlington, the Rock Island and Illinois Central. To the west there is the Milwaukee, Northwestern, Rock Island, Burlington, Illinois Central, Great Western, Wabash, Santa Fe, and Alton. I think I have given them all.

Q. These railroads going to the northwest from Chicago reach St. Paul and Minneapolis?

A. Yes, sir.

Q. What railroads going into these cities from the east or southeast terminate there?

A. The Wisconsin Central, the Burlington, the Great Western, and the Illinois Central, in connection with the Minneapolis & St. Louis and the Rock Island are lines which terminate from Chicago to Minneapolis.

Q. Are there railroads that begin at those cities and go west?

A. Yes, sir.

Q. What roads?

A. The Great Northern, the Northern Pacific, and then it might be said the Milwaukee, start again from Minneapolis and St. Paul and go direct west—and the Northwestern.

Q. Are there any of these railroads that reach Sioux City on the Missouri River and stop?

A. The Northwestern system passes through Sioux City. The Milwaukee may be said to have Sioux City as a terminal. They pass to the north on their through traffic. They can pass 866 at Sioux City. The Illinois Central terminates at Sioux City.

Q. Are there any railroads that terminate at Omaha coming from Chicago?

A. Yes sir.

Q. What roads terminate at Omaha?

A. Milwaukee, Great Western, Illinois Central, Wabash.

Q. What railroads terminate at Kansas City going into it from the east?

The WITNESS: From Chicago?

Mr. McHUGH: Or St. Louis?

A. I have named St. Louis. From Chicago is the Great Western, the Alton, the Wabash.

Q. And the Milwaukee?

A. The Milwaukee that is right.

Q. What railroads begin at Omaha and go west?

A. Union Pacific.

Q. What railroads begin at Kansas City and go west?

A. The Union Pacific.

Q. What railroad if any begins at St. Joseph and goes west?

A. I want to say so far as Kansas City is concerned there are some short lines out there, Leavenworth Kansas & Western I think is one.

I want to add that the Missouri Pacific terminates at Omaha from St. Louis.

Q. What railroad begins at St. Joseph on the Missouri River and goes west?

A. The Grand Island. The Grand Island also runs from 867 Kansas City. They run from Kansas City through St. Joe.

Q. Are there any railroads built to Denver from the east that terminate there?

A. Yes sir.

Q. What roads?

A. The Burlington, Rock Island, Santa Fe, and Missouri Pacific at Pueblo which is common with Denver. The Union Pacific also terminate their *their* Colorado branch practically there. They have some lateral lines out into Colorado.

Q. Are there any railroads that begin at Denver and go west?

A. I want to add to that other answer that the Colorado Southern is a line from the south in connection with the Fort Worth & Denver City into Denver and Pueblo.

Q. The Colorado Southern reaches Denver from what territory?

A. From Texas. The roads that run from Denver west are the Denver & Rio Grande, the Colorado Midland, and there are a number of smaller lines, the so-called Moffatt line, the Cripple Creek and a few others that are interior lines that do not go out of the state.

Q. Do any of the lines that begin at Denver and go west extend to Salt Lake City?

A. Yes.

Q. What ones?

A. Denver & Rio Grande, also the Union Pacific can be said to go from Denver to Salt Lake City.

Q. I am going to speak of that later.

A. All right.

868 Q. Does the Midland in connection with the Denver & Rio Grande operate through to Salt Lake City?

A. As joint routes.

Q. Are there any railroads that begin at Salt Lake City or Ogden and go westerly?

A. Yes sir.

Q. What roads?

A. The Southern Pacific, the San Pedro, Los Angeles & Salt Lake, and the Western Pacific now building. There is the Oregon Short Line that goes north from Salt Lake.

Q. Are there any railroads that are built and operated into the city of Memphis from the east that terminate there?

A. Yes sir.

Q. What ones?

A. The Louisville & Nashville, the Southern, the Illinois Central system from the east, and I think part of the Frisco system comes from the east, from Birmingham into Memphis. I know it. The Nashville, Chattanooga & St. Louis from the east is another road.

Q. What roads begin at Memphis and go west?

A. The Missouri Pacific, the Rock Island, the Frisco and the Cotton Belt.

Q. Are there railroads that run to New Orleans from the east and terminate?

A. Oh, yes, New Orleans & Northeastern, Louisville & Nashville from the north, the Illinois Central and there are some shorter lines in there that do not run all the way through but they are joint roads. I cannot give them from memory.

869 Q. Are there railroads that begin at New Orleans and go west?

A. Yes sir, the Texas & Pacific, the Southern Pacific system and a number of Louisiana roads that I cannot call by full name. I know some of the initials but I will file the others.

Q. You will file in connection with your testimony the detailed information with respect to these roads that go in and out of these cities?

A. Yes sir.

Q. There are some roads that pass through some of these cities for instance the Wabash road does not extend to seaboard territory?

A. No sir.

Q. But it extends from Buffalo across the Mississippi River to the Missouri River?

A. Yes, sir at Hannibal.

Q. The Burlington and Rock Island extend through from Chicago through the Missouri River cities to Denver?

A. The Burlington, Rock Island, and Santa Fe extend through. The Missouri Pacific extends through from St. Louis in connection with the Denver & Rio Grande to Denver.

Q. The Union Pacific extends from Omaha to Ogden?

A. Ogden and Salt Lake.

Q. And has a branch down from Cheyenne to Denver?

A. Yes, Julesburg.

Q. A cut-off from Julesburg?

A. Yes.

Q. And a line from Cheyenne?

A. Yes, sir.

Q. The Soo line extends from Sault Ste. Marie?

870 A. Through Minneapolis to the northwest up to the border.

Q. Now there are how many different classifications in use on the railroad systems of the country?

A. There are three main classifications, the official in the east the southern in the south and the western west of Chicago and the Mississippi River. Added to that are a number of state classifications which in the main are the western with certain modifications.

Q. They are immaterial to this controversy?

A. The south has local state classifications.

Q. When the systems which you have named, which extend from the seaboard territory to the city of St. Louis, completed their lines to the city of St. Louis what classification carried to St. Louis on seaboard business?

A. There were in times gone by, the dark ages we might say two

classifications. There was one in the east the name of which I do not recall and there was west of Buffalo what was known as the middle western states classifications. Those were all amalgamated into so-called official classification about the time that the Interstate Commerce law went into effect.

It was stipulated by the solicitors for all parties that Mr. Boyd the witness may make such reference to or quotation from the books which contain the three classifications mentioned by him as
871 he chooses to, with the understanding that any party may make reference to the books containing the classifications at any time and at any stage of the proceedings as though the same were filed of record.

Q. Is there a difference in the classification of articles as classified in the official classification and the western classification?

A. Yes there are six classes in the official classification, one to six inclusive they are numbered. In the western there are five numbered and five lettered classes, ten in all. The official classification, where there is a difference, generally is lower in its rating than the western. For instance an article in the official might be second and in the western it might be first. Where there is a difference at all it is generally in favor of the official classification. It is lower.

Q. The eastern systems then carry into St. Louis the official classification?

A. Yes sir.

Q. All their rates and all their shipments from seaboard territory are shipped under the official classification?

A. There is an exception to that. In trans-continental circles they are governed by the trans-continental tariff, which is almost a classification of itself; but subject to the western classification where a classification governs at all.

872 Q. Then the roads running from St. Louis west use what classification?

A. The western as modified by what we call the exceptions. That is western classification in Texas has a number of exceptions to it. In Kansas the same and Oklahoma I think it is the same.

Q. What is the fact as to whether the railroad systems extending from the seaboard to Chicago and the railroads extending from Chicago to the Missouri River cities, were under any commercial necessity to equalize the rates from seaboard to Missouri River points through Chicago with the rates from the seaboard through St. Louis to the Missouri River points?

A. The necessity was very apparent.

Q. Just explain it?

A. The lines in competition with the St. Louis routes naturally had to say to the shipper that their through charge in the aggregate could not exceed on business through Chicago to the Missouri River that rate applying via St. Louis gateway. For years the railroads attempted to cover this by what we call equalized rates. They would add articles in the official classification we will say double first class, assuming that was the higher rated article in the official. I am just

giving it as an illustration. Take double the first class rate from New York to Chicago and double the first class rate from
873 New York to St. Louis, and they would add to those two rates the actual classification from Chicago and St. Louis west under the western. The lower combination would be the maximum figure, and that was affected by certain reductions from the local rate from Chicago or St. Louis as the case might be, so that they were on a parity. It was so burdensome and so complicated and massive, and changes were made so frequently, that it was impossible to derive the benefit sought.

Q. And the benefit was the equalization?

A. The equalization. In order to break that, the official classification being a fixture to St. Louis and being lower than the western, and the rate from upper Mississippi River crossings west to the Missouri being the same as from St. Louis, it followed that the rates from the east to these upper Mississippi River crossings, inbound on through traffic, should be no higher than to St. Louis with the classification governing into St. Louis. So we added to the rails of the eastern roads from the seaboard to Chicago, and what I say of Chicago is true of Peoria, and the rails from Chicago to the various Mississippi River crossings as far north as Dubuque, being the most extreme northern crossing by which any line passed to the Missouri River, making a joint rate from the seaboard to these
874 various crossings equal to that to St. Louis and subject to the same classification. Then west of those Mississippi River points the same rate prevailed as from St. Louis under the western, making the combination the same all along the line.

Q. So that in that way the railroad systems running from the seaboard to Chicago, in connection with the lines running from Chicago to the Missouri River cities, equalized the rate from the seaboard to the Missouri River cities with the controlling rate through St. Louis?

A. Yes, sir.

Q. And that was compelled by reason of the fact that if they did not equalize the traffic would go through St. Louis?

A. It was purely a matter of competition. It was that or nothing.

Q. I wish you would state how the rates on the railroads from the seaboard were originally made?

A. As the roads were built westerly from New York and the seaboard points they were working on what is known as a local scale of rates. As they extended on until they struck competitive points where two or more lines would meet, rates that were constructed on a mileage scale had to give way to that which had the least distance. Then new lines were established from Buffalo west, and I think they stopped at Cleveland and they repeated this same process of rate making. Another line from Cleveland to Toledo and
875 another from Toledo west, and it was a fact as I have read from articles and picked up from my association with the various traffic officials that a shipment could not go from Chicago to New York without a rebilling and rehandling at each of these

points where the different links began to unite; and it is very interesting to know that the water rates, that the lake and rail rates were more advantageous to shippers at that time because of the through bills of lading that they *they* could get of them that they could not get from all rail. And the rates by water and rail were as high as they were by rail. Now these systems were amalgamated. First the link from Buffalo to Chicago was made one by the Lake Shore. Then other roads followed until we have the systems that are in existence today. As these systems were developed the rate was made continuous over the one line on to the end of its rails.

Q. Take the railroads that were built from Chicago and St. Louis west, how were those rates established?

A. In the same way. They would start from Chicago and build west independent of any other carrier, making rates according to the conditions. If it were a class traffic like live stock it had to be handled with respect to the facilities of driving and subject to water rates more or less, canal and so forth. As they built on west towards the Missouri River they would meet others and they would
876 cross and their distance tariffs would be more or less affected by the short line. As they would get to the Missouri River they would terminate and there as is always the case in the construction of railroads develops a distributing point.

Q. Then the lines beginning at the Missouri River and building west?

A. They repeated the same process until they got to Denver, and from Denver until they got to Salt Lake, and from Salt Lake until they got to the Pacific coast.

Q. That is true of the building up of St. Paul?

A. St. Paul is the same way. A number of these lines there are combinations of various smaller locals.

Q. Then these railroads made their rates on their lines from their initial point to the terminus?

A. Yes, sir.

Q. And the new line at the Missouri River made the rate from its initial point to Denver?

A. Yes, sir.

Q. And the line beginning at Denver and going to Salt Lake made its rate to Salt Lake?

A. Yes.

Q. That resulted in what we term the breaking of these rates?

A. Yes, sir.

Q. The rate in to the Missouri River cities and the rate from the Missouri River cities to Denver was the rate paid for shipment to Denver whether it stopped at the Missouri river and was
877 reshipped or went through?

A. It did not make any difference.

Q. What was the commercial effect of that condition of affairs?

A. The development of what are known now as the larger commercial interior centers.

Q. How was the commercial development of these cities based

upon and related to this breaking of the rates which you have mentioned?

A. The fact that first at the points where the rates broke was found a converging of the greatest number of lines from the in-bound and the greatest number of lines out-bound, it afforded an opportunity to bring in the traffic or to distribute the traffic. It naturally followed that wherever these facilities existed to the greatest extent the merchants took advantage of the situation, and they have built up their business on that theory.

Q. How did the breaking of the rates at the Missouri River cities as an illustration, enter into the development of the business of those cities in respect to their ability to compete with the great merchants of the seaboard?

A. The item of transportation is a fixed item of cost in the merchandizing of any class of goods. That is axiomatic. You cannot get away from it. If that item is such that because a shipment stops at some intermediate point in the line of transit and is then
878 rehandled, it is greater than if it were shipped through to the consumer direct, the man at the intermediate point must absorb that burden, and some times and very frequently on goods that are sold at close margin it practically puts him out. Others can get along and absorb it but it reduces their profits and injures them to that extent.

Q. And restricts their trade to that extent?

A. Restricts their trade and narrows the limit of their distribution.

Q. Then the fact that the through rates from the seaboard to Denver for instance was the sum of the locals through Omaha allowed the Omaha merchant to proceed on an equality at least with the merchant on the seaboard?

A. Yes, sir.

Q. What is the fact as to whether that same thing is true with respect to the cities of St. Louis and Chicago?

A. It certainly is.

Q. Whether that is true of the cities of St. Paul and Minneapolis?

A. Yes, sir.

Q. And Denver?

A. Yes, sir.

Q. And Salt Lake and Ogden?

A. Yes, sir.

Q. And New Orleans?

A. Yes, sir.

Q. And Memphis?

A. Yes and the Pacific coast terminals.

879 Q. The commercial development of the section of the country where this has obtained has been dependent upon and grown up in relation to this system of rate breaking?

A. Yes sir.

Q. What would be the effect upon the commercial interests of these cities if this system was changed and through rates were made less than the sum of the locals?

A. It would be injurious and detrimental.

Q. How and why?

A. Because it would force the merchants at these cities to absorb out of their profits the difference between the rates in and out that they pay, and the through rate given their competitor. It would have a greater effect. The commercial development of the larger cities of this country has been stimulated very greatly by this fact, that they offer to the man who seeks to establish himself in the manufacturing or distributing line an inducement by giving him the assurance that these rates in and out are equal to those which his competitor can get; and he therefore in seeking the advantage of locating at these different points is also assured of the fact that he is not going to have a burden put upon him because of some lower through rate that may be made for some other city. The manufacturers invariably look into that factor or feature of the case before they locate. That is one of the first propositions they consider, what are the rates in and out to the territory of consumption for me here, as against some other location.

Q. If the adjustment of the rate makes the other location more desirable by giving it an advantage of a lower through rate than the sum of the locals that advantage would in a large degree control the location of new enterprises?

A. Yes sir decidedly so. That is my experience too in dealing with the public.

Q. The effect then by the establishment of such a principle would be to congest these interests in the markets of the east?

A. Yes sir and the extreme west.

Q. Where they would get the advantage?

A. Yes.

Q. Confining ourselves to this particular order of the Interstate Commerce Commission, if this particular order was enforced what would be the effect upon the commercial interests of Chicago, St. Louis and C. F. A. territory?

A. It would be detrimental and injurious to them to that extent.

Q. For the same reasons that you have mentioned?

A. Yes, sir.

Q. You have testified as to how these rates throughout this section were made and how the rates broke at the points where railroads ended and new railroads began. You may state whether the
881 railroads of that section have maintained that system of making rates?

A. They have uniformly except where competition has modified it.

Q. And these modifications are under compulsion?

A. Under compulsion.

Q. And competitive conditions?

A. Yes, sir, competitive conditions.

The solicitors for the complainants produced a large map which was marked "Exhibit E".

A blue print copy of said map is attached hereto following page
1175.

Q. I now show you the map marked "Exhibit E". Was this map made under your direction?

A. Yes sir.

Q. I will ask you to state whether this map is intended to show the rate situation?

A. Yes, sir.

Q. Explain the map, the significance of the difference between the dotted lines and the straight lines, and explain the features of the map and show how the map illustrates the rate conditions of the country?

A. Commencing at the seaboard there is defined there what is known as the seaboard territory under discussion in this case. It is covered by tariff 786, western trunk line. The black lines represent territory in which the official classification prevails on traffic

882 from the seaboard, They run to Minneapolis and to St.

Louis, and the arrow pointing from the crossings of the Mississippi River is merely to indicate that on through traffic the rates from the seaboard to these various crossings get their cue from St. Louis, are based on St. Louis figures and official classifications. Commencing at Chicago the brown dotted lines represent the roads which terminate at the Missouri River and Minneapolis. The blue lines from Chicago and from St. Louis to the Missouri River and Minneapolis merely indicate that this service is also rendered by other lines to points beyond. West of the Missouri River the dotted lines are supposed to represent what is known as the trans-Missouri, Colorado, Utah and Pacific coast districts. The territory into which the rates break at the Mississippi River is the State of Missouri and that portion of the country west of the Missouri River and north of the Kansas, Colorado and Utah and Nevada state lines except immediately west of Omaha in what is known as the Lincoln-Fremont differential territory, as indicated by the red line, southwest of Kansas City in what is known as the percentage group, Wichita, Hutchinson, McPherson, Winfield, Kiowa, Coffeyville, Pittsburg. Those are representative points. There are a lot of others. There is another exception and that is of course the Pacific coast, and a certain

883 territory in Iowa, Southern Minnesota and South Dakota, where the rates break on the upper Mississippi River crossings. There is a section immediately west of the Missouri

River, in South Dakota, where the through rates combine on what is known as various terminals. They may be Minneapolis, Sioux City or Omaha. Those constitute practically the exceptions. When I say Mississippi River understand that that goes clear to St. Paul. The rates break on St. Paul in the northern tier of states, Minnesota, North Dakota and Montana. To Montana common points the rates break only on the St. Paul gateway, and they equalize on the Omaha and Kansas City gateway. The rates to points in Nevada are made on the sum of the locals through Salt Lake and out unless the combination via Sacramento back is more. The rates to Idaho are based on the Missouri River combination with the Montana common point rate as a maximum at strictly intermediate points. The rates to the interior of what are known as Pacific coast

cities, Washington, Oregon, California, are based upon the rates to the terminal points known as Portland, Seattle, Tacoma, San Francisco, Sacramento, Los Angeles, and so forth, and the local back, with a few exceptions of what is known as intermediate rates. There are some possible exceptions. The map is made to show that in going to points in Kansas and Nebraska, with the exception of the 884 Lincoln-Fremont differential territory, and the southeastern percentage group, the rates are the sums of the locals. They are the sums of the locals to Colorado, Wyoming, Idaho, and Utah, and Nevada, except as I have stated where affected backwards. At Denver the rates again break, so that in going into Colorado and Utah the rates are made on the combination of rates to Denver, Pueblo or Colorado Springs, all common, and the local out, with the maximum of the Salt Lake Ogden rate to points known as Salt Lake common territory. They do not apply as a maximum beyond that. The rates from Omaha to Salt Lake are direct on one line, the Union Pacific. And the Colorado lines in connection with the Denver and Rio Grande must combine the through joint route and rate to meet that situation.

As to the percentage group in southeastern Kansas which constitutes one of the exceptions, the rate from St. Louis to Wichita are 95 per cent of the combined locals from St. Louis to Kansas City and Kansas City out. To Coffeyville they are 90, to Pittsburg 80, subject to modifying conditions influenced by the state rates of Missouri in the border immediately across the line in Missouri. By that I mean the rates have to be granted.

Around these towns of Wichita and Coffeyville and Pittsburg are grouped a number of others, like McPherson, Hutchinson and 885 Kiowa. They are not percentage points but they are jobbing points and they serve the same territory, and the competition forces them to extend this Wichita basis of rates, whatever it may be, into these other points, because out of there they have the same mileage scale as given to them by the Kansas State Commission.

This percentage was the result of the demand of the lines from St. Louis operating traffic around Kansas City for lower rates than a combination of the local, on account of their through lines being direct, and distance. But it went to arbitration. It was arbitrated in 1886, and these percentage groups to which I refer were established.

Mr. ARWOOD: What book are you referring to.

A. That is the book of the Southwestern Railway Association.

Mr. ARWOOD: Is it accessible to others than you?

A. I would be very glad to let you see it. It is the only one in existence. We can give you a copy of this award. This award covers a great many little points in there. At that time the long and short haul clause was not in effect. When that law was established it wiped a good many of them out. Now in the southeast the red lines or the lines drawn from Louisville, Cincinnati and Memphis to Birmingham, Atlanta, Jacksonville, and I only used a point in

886 each state because I did not wish to load the map up too much, are what is known as basing points, and the rates from Memphis and Cincinnati and I might say St. Louis because it is the same thing, are made to these various states by the local into these basing points, and the rate reaches out, as shown by these little marks. There are altogether in the southeast some forty-five basing points on which rates are made, a list of which I will file with my statement, showing the routes on which they are located. These basing points in the southeast are numerous and the zones overlap very frequently. The through rates are made on a combination of the rates in and out of these basing points. That is not true with regard to Virginia or North Carolina. They are more of a haphazard hit or miss proposition, but into what we call the southeast territory as distinguished from Carolina and the Virginias, it is true.

Now further you will find on this map certain figures at Denver and Salt Lake and all these points, showing the through rate from Chicago and St. Louis. You will find also along each one of these lines a little figure. For instance take Omaha and Denver, out of Omaha 1.25. Out of Chicago it is 80 cents. That indicates the first class rate locally between the points. When you get to the through rates we put them at the point of destination instead of along 887 the dotted lines. The map will speak for itself mostly any way on these figures because I have got them in here.

In addition to that we put in here a line from Boston and New York passing down through the Gulf of Mexico, across the Isthmus and up to Pacific Coast points, as indicating what is known as water competitive routes. The rate from Atlantic to Pacific coast points on first class is \$1.80 and that establishes the through rate all rail from the seaboard to Pacific coast points and as applied at intermediate points.

Q. That map correctly shows what it represents?

A. Yes.

Complainants' Solicitors offered in evidence the map marked "Exhibit E." (See page 1157.)

888 Q. I wish you would state what portions of the United States are served under the system of rates whereby the through rate is no less than the sum of the locals, but equal to it?

A. I gave that, but perhaps I gave it a little elaborately. I will try and make it shorter.

Q. I just ask the question so as to get it in one general statement?

A. They break at the Mississippi River for all points west thereof to but not including the Pacific coast points, and north of the southern line of Kansas, Colorado, Utah and Nevada. That is generally speaking. The exceptions are Lincoln-Fremont differential, southeastern Kansas percentage points and Montana common points.

I draw particular attention to these three points, Lincoln-Fremont differential, southeast, and Montana common points. They are the main exceptions.

They break again at Pacific coast points for Pacific coast cities. They break again in the southeast, in the states of Alabama, Georgia, part of Tennessee, part of Mississippi, and part of South Carolina, and Florida. They break at New Orleans, at Memphis from the southeast to points north of the Southern Kansas, Colorado and Utah lines.

Q. You have testified that the rates break at the Mississippi River. That is true of all the lines?

889 A. Yes. I want to say this if you please right there, because I do not want to have a wrong impression. With respect to Iowa they do not break at the Mississippi River other than at Des Moines, Ottumwa, and points on and south of the main line of the Chicago Burlington & Quincy Railroad. They combine on the Mississippi River, but the proportional rates in and the proportional rates out, are not applicable on business rehandled at the various Mississippi River points. But they get it in another way, they have a local scale into the upper river points higher than the proportional, and their Iowa distance tariff out added to it approximates the through rate made on the proportional rates.

Q. Now the breaking of rates at the Mississippi River is true of the Wabash railroad that extends across the river?

A. Yes, sir, from the east.

Q. The breaking of the rates at the Missouri River exists on the Burlington Railroad that extends through Omaha to Denver?

A. Yes, sir.

Q. And exists on the Rock Island that extends through Omaha to Denver?

A. Yes, sir.

Q. And exists on the Missouri Pacific that extends through Kansas City to Denver?

A. Yes, sir.

Q. And exists on the Santa Fe Railroad that extends through Kansas City to Denver?

A. Yes, sir.

890 Q. And exists at St. Paul where the through line runs from the east through Minneapolis and St. Paul?

A. Yes, sir.

Q. And exists in the southeast at these forty odd breaking points you have mentioned although railroads run through these points to points beyond?

A. Yes. I would like to say right there, they break even worse in the southeast than any section in the west. The rates from the Ohio River to a point intermediate of one of these basing points represent the rate to the basing point and the back haul, although they may pass through it. That is the long and short haul clause is not observed.

Q. I wish you would state the effect to the jobber on the Missouri River, and to various Missouri River cities, of the relation of the car load to less than car load rate as it exists today?

A. Wherever the rates on the Missouri River are based on the two locals there is also an advantage to the Missouri River jobber over the man in St. Louis or Chicago for the reason that the man on the Missouri River buys in car load lots and reships, so that his combined rate from the Mississippi River or points east thereof to the Missouri River in car loads and his distributing rate out in less than car loads, is less than the less than car load or distributing rate from St. Louis direct to the same point. That is where there is a car load rate. There is no car load on dry goods, there is no car load on boots and shoes, there is no car load on hats and caps, but I am speaking of the situation as a whole. This order is classes 1 to 5 and takes in the car load. As illustrating that point I want to give some figures. I am going to quote from the Interstate Commerce Commission. The Interstate Commerce Commission in 1902 promulgated a document which I will show to you. I do not know what you call it.

Mr. McHUGH: Call it a twenty-two year review of railway operation, printed in 1903 Part 2.

The WITNESS: On page 38, table 1 is a comparison of the various classifications used during the years 1873, 1878, 1882, 1886, 1887, 1890, 1895, 1900 and 1902 in the territory now covered by western classification. In 1873 the total number of articles classified as less than car load and also for car loads was 104 out of a total rating of articles of 907, or 11.47 per cent. In 1902 it had grown from 104 to 5336 articles out of a total of 8044, or 66.34 per cent. Briefly stated from 1873 there has been an increase in the articles given a car load rating, from 11.47 per cent to 66.34 per cent. Now you must add to that advantage the Missouri River has the difference between the commodity ratings that are frequently made on articles which are taken out of the class and given a still lower rate. As illustrating this point more forcibly I would like to call attention to this fact. I had these compiled by the Chairman of the Western Classification Committee using Classification No. 1 of 1887, the first issue under the name of the western with No. 43 a year ago. I will commence with articles which in less than car loads take a rating of double first. In Classification No. 1 these articles had no car load rating. In Classification No. 43 one of them had a car load rating of once and a half first class. They were given a car load rating in No. 1 six of those articles taking double first class L. C. L., and in classification 43 nine. They were given in No. 1 two car load ratings at second class, and in classification 43 twenty-nine articles. They were given six car load ratings under No. 1 third class and fifty-four car load ratings third class under No. 43. They were given one car load rating at fourth class by No. 1 and twenty-two car load ratings by No. 43. Now drop down to Articles taking first class L. C. L., classification No. 1 gave two articles in a car load rate at second, classification 43 increases it to twenty-two. Third class they had twenty-eight car load ratings in No. 1 and 209 in No. 43. Fourth class twenty-three articles in No. 1 car loads, and

893 ninety-four by No. 43. Fifth classification car load ratings in No. 1 and eighty-three by 43. I am not going to read them all. I do not know but it would save time to file the statement.

Q. Just say what this statement shows?

A. The increase in the car load ratings of the articles that formerly took only L. C. L. ratings.

The paper referred to by the witness was marked "Exhibit F" and was offered in evidence by the Complainants' solicitors. It here follows:

Comparison of Ratings on Articles Classified, both L. C. L. and C. L., as Shown in Classification No. 1, Issued April 1st, 1887, with those in Classification # 43, Issued October 1st, 1907, Showing the Number of Ratings in Each Combination.

C. L. Ratings.										Totals.																			
1 1/2		1		2		3		15% off 3rd		4		15% off 4		20% off 4		5		A		B		C		D		E		Totals.	
#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43	#1	#43
1																													3
4 x 1st class	43			1		2																							6
3 1/2 x 1	43					3		1																					6
3 x 1	43	1		1		1		1																					28
2 1/2 x 1	43	1		1		10		14																					15
2 x 1	43	1				9				4																			35
1 1/2 x 1	43	1		6		2		6		1																			164
1st	43	1		9		29		54		22																			11
2nd	43					1																							160
3rd	43			5		29		56		7																			168
4th	43					2		28		23																			548
Totals	43					22		209		94																			177
1st	43					31		54		54																			582
2nd	43							118		191																			709
3rd	43									41																			300
4th	43																												791
Totals	43			7		6		66		119																			884
		2		16		104		462		417																			3006

NOTE.—Items having straight C. L. or mixed C. L. ratings and having specific L. C. L. ratings in same items not included.

894 The WITNESS: This increase in the car loads as shown by the Interstate Commerce Commission of from 11½ to 66 per cent, gives the measure of the advantage the Missouri river man has constantly gotten over the Chicago and St. Louis merchant. We do not say that that can be helped, because we compete in all the car loads here the way they are made, but I am only offering it to show that there is an advantage there just the same. That advantage wipes out in a great many cases these exceptions that I have mentioned in the way of Lincoln-Fremont differential territory and in the south-east.

I produce a table which is a comparison of the combination, taking St. Louis as a basis, via the Missouri River to what is known as the southeastern percentage group vs. the through rate.

Mr. McHUGH: It has no connection with the other?

A. No.

Q. You are showing now what the effect of this order would be?

A. This is a new proposition entirely.

Q. I will ask a question so as to get it clear. I wish you would state whether you have investigated and ascertained the effect of the enforcement of this order of the Interstate Commerce Commission upon the relation of the rates which the Kansas City Merchant will enjoy into the percentage territory in Kansas?

895 A. Yes, sir.

Q. I wish you would explain that effect.

A. These figures compare the combined local St. Louis to Kansas City and Kansas City to these southeastern points with the through rate on the percentage scale from St. Louis, and also with the combined Commissioners' rate as proposed St. Louis to Kansas City and the local out, with the present through rate from St. Louis.

Q. You say this shows it. You refer to the table marked Exhibit G?

A. Yes.

The paper referred to by the witness was Marked "Exhibit G," and was offered in evidence by the solicitors for the complainants, and here follows:

896

"EXHIBIT G."

Wichita:

	1	2	3	4	5
(a) Combination St. Louis to Kas. City with rates Kas. City to Wichita	1.26	1.03	85	67	58
(b) Thro' rates from St. Louis (95 % of Comb.).....	1.195	98	81	64	55
Difference .....	.065	5	4	3	3

(c) Comb'n of Comm. rate St. Louis to Kas. City with local rate Kas. C'y to Wichita.....	1.17	96	80	63	55
Diff. between B & C.....	.025	2	1	1	0

Hutchinson:

(a) Combination St. Louis to Kas. City with rates Kans. City to Pittsburg.....	1.26	1.03	85	67	58
(b) Thro' rate from St. Louis.....	1.195	98	81	64	55
Difference.....	.065	5	4	3	3

(c) Comb'n of Comm. Rate St. Louis to Kas. C'y with local rate Kas. C'y to Hutchinson.....	1.17	96	80	63	55
Diff. between B & C.....	.025	2	1	1	0

McPherson:

(a) Combination St. Louis to Kas. City with rates Kas. City to McPherson.....	1.21	1.01	85	66	57
(b) Thro' rate from St. Louis.....	1.195	98	81	64	55
Difference.....	.015	03	4	2	2

(c) Comb'n of Comm. Rate St. Louis to Kas. City with local rate Kas. City to McPherson.....	1.12	94	80	62	54
Diff. between B & C.....	.075	4	1	2	1

897 Kiowa:

(a) Combination St. Louis to Kas. City with rates, Kas. City to Kiowa.....	1.42	1.13	95	82	66
(b) Thro' rate from St. Louis.....	1.30	1.09	95	82	66
Difference.....	.12	4	0	0	0

(c) Comb'n of Comm. rate St. Louis to Kas. City With Local rate Kas. City to Kiowa.....	1.33	1.06	90	78	63
Difference between B & C.....	3	3	5	4	3

Present rates to St. Louis to Kansas City.....	60	45	35	27	22
Commissioners' rates.....	51	38	30	23	19
Reductions.....	9	7	5	4	3

898 Q. Without going into all the figures of "Exhibit G" and the computations which speak for themselves you may state what the effect of this order would be with respect to the Kansas City merchant in the rates to this Kansas percentage territory?

A. With respect to Hutchinson, McPherson, Kiowa and Wichita it tends to wipe out the difference between the through rate today in effect from St. Louis and the combined local on Kansas City. There are some few exceptions on class here and there. Add to that that the advantage as a whole in the car load ratings on top of this makes these differences disappear very largely.

Q. The through rate from St. Louis to this territory today is made by the direct line which does not reach Kansas City?

A. Yes, sir.

Q. But goes directly from St. Louis to that territory?

A. Yes sir.

Q. And the effect of the order would be to let the Kansas City merchant ship from St. Louis to Kansas City, one side of the triangle, and down to these points, another side of the triangle, at a lower rate than the direct line?

A. Yes, sir.

Q. Is there a general rule in this country that the through rate for the long haul is or should be less than the sum of the locals for the two short hauls?

899 A. No not that I know of.

Q. That proposition that the through rate should be less than the sum for the two short hauls does not apply in any of this territory that you have mentioned where the rates break?

A. No sir.

Q. You may state what the fact is as to why in certain instances the through rate is less than the combination of the two locals?

A. Uncontrollable competition.

Q. It results from that?

A. Yes, sir.

Q. That is the absolute and universal fact?

A. Yes sir. I would like to state a little premise there in order to clear it up. No railroad official to my knowledge ever accepts voluntarily less than his local rate on any traffic. Wherever he must take less it is because of competitive conditions and it is that or nothing. If he does not meet the situation he foregoes the traffic.

Q. State whether railroads are ever justified in taking a lower proportion of a joint through rate than the reasonable local for the particular haul?

A. Yes sir.

Q. You may state what circumstances justify this?

900 A. As I stated before it is that the traffic is moving on a rate that will require a line to participate in competition therewith to join in a thorough rate with some connection which may give them less than their locals, but which is all they can get and get the traffic. If they are to participate and stay in the market in the transportation of these goods between competitive points where their local will not move it because it is too high in

regard to some other route and rate they are justified in hauling the business, until they strike the point of loss.

Q. You may state whether this practice of railroads, joining with other roads in making a joint through rate less than the local, to meet the rate fixed by some other competing line, is of benefit to the public?

A. Decidedly so.

Q. How.

A. There is no railroad or railway system or single line of road between points of distribution and points of consumption where the traffic amounts to anything, that at all times can furnish the facilities the public require. The public are today exercised—I am speaking of the last two or three years—as much and I know at times a great deal more with regard to facilities of transportation than they are with regard to the rate. Without roads the rate is of no account to them. Without cars and facilities they cannot employ the rate in

the movement of their traffic. The various roads that join
901 their connections in competition with the throughline afford to the public the benefit of their facilities, their car supply and in the competition of markets. Chicago is the center of a very big manufacturing district with a radius perhaps of a hundred miles, and there are a great many points on each road running from Chicago west that have manufacturing institutions. They are competing in the territory in the west that is not served direct by the line on which they are located and it is necessary therefore for these lines when factories are located within ten or fifteen miles of them or more on a road that runs west of the Missouri River for instance, that there should be a joint rate to enable them to go out and distribute their goods in competition. And if you take away that question of joint rate entirely it would confine to the road having its own rails all the way between the points, a monopoly of the traffic, which they could not handle satisfactorily. Experience has demonstrated that many a time.

Q. Have you tabulated the comparative expense of the solicitation of freight by the Missouri Pacific railroad, on the seaboard and at St. Louis?

A. Yes, sir.

Q. I wish you would give the results of that.

A. The total cost of our soliciting force in seaboard territory devoted exclusively to the solicitation of freight traffic is 70
902 per cent of the total amount of the expense of that seaboard to St. Louis combined. As testified by Mr. McPherson the figures are reversed with respect to the tonnage. About 30 per cent of the Missouri River business for instance moving from the seaboard and from St. Louis came from the seaboard. Thereby it is 70 per cent of the expense to 30 per cent of the tonnage.

Q. I wish you would tell us so far as you can what would be the reduction of the revenue of the railroads in this city if the order of the Commission was put into effect?

A. Well, it is a very difficult thing to give exact figures in all the territory affected, but to the Missouri river cities, Sioux City to Kan-

sas City inclusive, it amounts to about \$140,000 a year as applied to 1906 tonnage. I want to say we do not have these figures for every year but we did have a continuous statement up to 1906 and took the 1903 figures. I want to give these figures subject to verification. It amounts to anywhere from seventy-five to a hundred thousand for Colorado common points and Idaho common points. Now there is all of the territory east of the Missouri River, in Iowa and Missouri, affected by these rates as a maximum. There is all of the traffic that moves through into Kansas, Nebraska, Colorado, Utah, Wyoming, Montana and Idaho that must be taken into consideration and there are no figures in existence that I know of to give a statement. I can only give you the territory.

Q. Give your best judgment?

A. I would not want to hazard a judgment on that business. I will guess and that is all I can do.

Mr. WALTER: We can do that.

Mr. McHUGH: If you can only guess, I won't ask you.

The WITNESS: I have no figures of that district.

Q. The merchandise affected by this order has moved very well under the rates ever since they have been in effect?

A. Yes.

Q. There is nothing in the nature of that traffic to compel a change in the rates?

A. Nothing that I know of.

Q. The order of the Commission was directed to certain particular railroads. Other railroads as you know have intervened?

A. Yes sir.

Q. If the order of the Commission went into effect as to those railroads that were in that suit state what the fact is as to whether the commercial conditions would compel these intervenors to adopt the same rates?

A. There is no question about it. They would have to stay in the traffic. I want to say that the loss is upon the traffic to the Missouri River cities as affected only by this order of the Commission. It has no bearing whatever upon the general loss that would follow by revising and reissuing rates throughout the territory.

Recess to 1:15 P. M.

1:15 P. M.

Cross-examination.

By Mr. WALTER:

Q. What lines do you represent now?

A. Missouri Pacific, Denver & Rio Grande and Texas Pacific.

Q. You have been with these lines in the capacity you mentioned in direct examination only since January 1908?

A. Yes, sir.

Q. Prior to that as far back as 1904 you were with the Chicago Board of Trade?

A. Yes sir.

Q. Prior to that you were Chief of the Tariff Department of the Rock Island?

A. I said I had gone there as Chief of the Tariff Department for five years, then Assistant General Freight Agent, then General Freight Agent west of the Missouri River and then General Freight Agent east of the Missouri River.

Q. During that time you were in the traffic department of the Rock Island?

A. Yes sir.

905 Q. That is one of the roads complainant in this case?

A. One of the original defendants.

Q. A complainant in this case

A. Yes, sir.

Q. Was one of the original defendants before the Commission?

A. Yes sir.

Q. None of the lines you now represent were interested before the Commission?

A. No sir.

Q. At the time this action was brought before the Commission you knew about it?

A. Understand I was then with the Board of Trade. I knew about it in a general way. I was not interested being with the Board of Trade. That was in 1907 I believe.

Q. But you knew as a matter of public information?

A. Yes sir.

Q. What is the Board of Trade. It is simply a grain proposition isn't it?

A. It is an organization of grain firms and includes in its membership all packers and men engaged in the merchandizing of hay and flour and products of the soil generally.

Q. You were solely connected with the grain matters?

A. Yes sir.

Q. The two classifications particularly concerned with the seaboard traffic to the Missouri River are the official and the western?

A. Yes sir.

Q. I believe I understood you to say this morning that the rate on a given article in the official classification might be and sometimes was in the western classification one grade higher?

A. Yes sir sometimes two. There is no general rule.

Q. For example an article taking second class up to the Mississippi River would be official?

A. From the seaboard yes.

Q. That would take say 75 cents?

A. I guess it is 75. I haven't the figures.

Q. Seventy-six now about?

A. You have got the rates whatever they are.

Q. Under the western classification that same article between the rivers might take a 60 cent rate?

A. Yes sir.

Q. That is a condition which may exist as to several different classes of traffic?

A. Yes.

Q. When the St. Louis rate was made with reference to the relation to Chicago at 116 per cent, simultaneously did the roads put in that same relation on all the Mississippi River crossings?

A. No, the 116 per cent as I said this morning, existing at St. Louis—I cannot go back to the date when it was first established but can get it if you want it—was equalized through Chicago, as I explained, by what we call equalized rates. We made these computations and published a specified rate on each class. It was not until 1887 if I remember correctly, or 1888, that the 116 per cent was placed on the upper river crossings as a substitute for this equalizing plan theretofore employed.

Q. But that basis was as to St. Louis 116?

A. Yes St. Louis had it because eastern roads ran in there.

Q. Then you added that provision to one Mississippi River crossing out of St. Louis, and later on to another?

A. I think so far as Burlington and north is concerned they were all put in at once, Burlington and Dubuque.

Q. South of Burlington?

A. It may have been at Hannibal, Quincy and Alton before that. I do not believe it was.

Q. It is true that at some of these other crossings there had been a much higher percentage than 116 for many years?

A. Yes sir.

Q. Quincy for example was 124 perhaps up to two years ago?

A. Yes sir.

Q. Moline and Rock Island?

A. 122 plus.

Q. They are very important gateways?

A. Yes sir.

Q. Your road went across at that point?

A. Yes sir.

Q. As I understand the history of the basing proposition, first Buffalo had a rate in and a rate out which would be the same as the through rate through Buffalo?

A. Going back to old conditions preliminarily speaking yes.

Q. Pittsburg was the same way?

A. I suppose it was.

Q. Cincinnati?

A. Yes. Wherever the road stopped and a new one commenced.

Q. That has been removed on traffic going west many years ago?

A. Yes.

Q. These cities have prospered as business centers notwithstanding that?

A. Understand that so far as Pittsburg, Buffalo and points west thereof are concerned, they are largely manufacturing establishments and not jobbers.

Q. But no matter what their business may be they have prospered?

A. Evidently so.

Q. And Chicago itself as a basing proposition about 1887 as I understand was removed, and a through rate to the Mississippi put in which was less than the in to Chicago plus the rate from Chicago to the Mississippi River crossings?

A. Yes sir.

Q. And Chicago has prospered notwithstanding that removal of basis.

A. Yes sir. So has Kansas City.

909 Q. Isn't it also true that there is a rate between the rivers, say to Iowa points, which makes a different proportion to the carrier depending upon the point of origin of that shipment?

A. Yes sir.

Q. For example the rate from between Rock Island Illinois and the carrier depending upon the point of origin of that shipment?

A. Yes sir.

Q. If it originates at Cincinnati or Louisville it takes 48½ first class?

A. I don't know what it takes.

Q. If it originates at Toledo or Detroit it is 43½ cents?

A. Possibly so.

Q. Can you see any difference at all in putting in the different rate, depending upon the point of origin, when the goods are moved through Rock Island to Des Moines, and when they are moved from the seaboard through the same point to the Missouri River?

A. Oh yes, lots of difference.

Q. I am speaking now of solely the difference in the proportion received by the carrier for the identical haul, the only difference being the point of origin.

The WITNESS: Do you mean do I see any difference in the figures or in the position?

Q. In the position?

A. Yes decidedly. In the case that you refer to, I am confining myself to that illustration.

910 Q. Traffic that originates at the seaboard going to Missouri River cities and carried through Rock Island on the same identical class originating at Buffalo, carried in the same car and in the same train and by the same carrier, receives no different service or treatment by the carrier in the one case than in the other does it?

A. No not as to service. I did not understand your question that way.

Q. I am speaking as to service?

A. I do not see any difference.

Q. This breaking system that you have referred to is chiefly in effect when traffic moves across the Mississippi River into western territory or when it moves across the Ohio river into southeastern or southern territory, those are the two principal breaking lines?

A. In the west and the south they break as you say. I did not say anything about breaking from Chicago on the Ohio River.

Q. Isn't it true that rates from Chicago to points like Atlanta take a through rate notwithstanding they cross a base line?

A. I believe, although I have not the figures, there is a difference of about five cents in first class.

Q. So that there is an example where the basing line is entirely ignored?

A. Yes. I won't say that the basing line even there is ignored.

Q. The through rate is less than the sum of the locals?

A. Yes.

911 Q. Notwithstanding that Louisville and Cincinnati both have prospered?

A. I should think they would with the adjustment they had further south.

Q. But you cannot say that that difference in rates has hurt their business at all from your own knowledge, not conjecture?

A. I cannot say anything about it.

Q. Isn't it true that traffic is handled to Montana common points for example on a through rate to the Missouri River?

A. As an equalized proposition.

Q. But it is true that the through rate is less than the sum of the locals?

A. For Omaha but not for St. Paul.

Q. But the goods do actually move by Omaha?

A. Yes sir they move that way under that rate or they would not move at all.

Q. Isn't it true that in all this territory to which you refer where rates break on the Mississippi River, that to this same identical territory from points east of the river there are through rates?

The WITNESS: What do you mean by this same identical territory?

Mr. WALTER: I will define that by saying to Utah common points.

The WITNESS: Now ask your question with respect to Utah again please?

Mr. WALTER: Isn't it true that to Utah common points on
912 the first five classes originating east of the Mississippi River there are in many instances in those first five classes joint through rates?

A. I know of none. You are speaking now I assume of all rail traffic?

Q. I am speaking of all rail traffic?

A. I do not know of any through rate from the seaboard by all rail to Utah less than the combination of the locals.

Q. I do not say from the seaboard. I said from points east of the Mississippi River?

A. That has got to be qualified, if you mean points in Illinois I would say yes, there are through rates on the Missouri River, because they are on the line of a road that terminates its track at the Missouri River. It is not true with respect to territory east of the Indiana and Illinois State Line which has to break as between the eastern and western roads.

Q. I am not asking the reasons.

A. I am trying to make my answer clear.

Q. All I am asking is the fact not the reason. It is true that from points east of the Mississippi River, for example in Illinois, there is a through rate?

A. Yes, including Chicago. That is not made on the Mississippi River but is made on the Missouri River.

Q. There is no greater sanctity on the one river than on the other as to the breaking point.

913 The WITNESS: What do you mean by sanctity?

Mr. WALTER: Because the carriers operate, some of them at least, across both rivers.

The WITNESS: The difference is this—

Mr. WALTER: I am asking if they do not do that.

The WITNESS: The rates from all points in Illinois on the lines of various western roads to the Missouri River, are continuous and do not break on the Mississippi River.

Q. So that there are through rates less than the sum of the locals?

A. There is a through rate everywhere on a continuous line. It don't break at every intermediate point. It could not possibly do that.

Q. It all depends on what cities the carriers may elect as the breaking point?

A. No, it does not depend on what the carriers may elect.

Q. Have the carriers only chosen this method? Can you point to a single order of any legislature or any body, any railroad commission, or the decree of any court, which has directed that this system of making rates be put in as to any particular points?

A. At the Missouri River for instance.

Q. Any breaking points?

A. I would like to take one at a time. I know of no order of a commission, state or national, courts, local or Federal, but I know of an order that is more powerful than all of them combined
914 with the railroads, and that is the public who demanded and have forced it.

Q. Let me ask you this, what public has demanded that the rate to any one point in the west be made up of the rate to the Mississippi River plus the rate beyond?

A. The Mississippi River stations, St. Louis for instance. The natural conditions and the breaking of the rates and system and different classifications may have forced that. You understand at St. Louis we have the official classification that you cannot add to the western. You cannot add oil and water. They have got to break. And the public have steadily watched that with very jealous care to see that they do not vary there.

Q. Isn't it true that from Chicago for example through St. Louis to certain points in the southwest you have a through rate.

The WITNESS: Texas for instance, do you mean?

Mr. WALTER: Yes.

A. Yes.

Q. Now that is one instance where St. Louis has not compelled you to do it isn't it?

A. St. Louis has not compelled us to break the rates at St. Louis. We would if we could.

Q. So that the railroad wherever it wants to do it can either
 915 maintain the breaking system or the through rate as it sees fit?

A. No. You go entirely out of the power of the public, the shipping public. You have taken as an illustration Chicago to Texas. The rates from Chicago via the Ohio river in connection with the Louisville & Nashville as a connection of the Southern Pacific system through New Orleans, and as applied in St. Louis, not Chicago alone but the entire territory in Illinois, Chicago, Milwaukee and points based thereon, was a matter of arbitration years ago after fights and loss of revenue, and that is simply the result of that trouble which we had and this arbitration.

Q. The carriers adopted the verdict of that arbitration?

A. It was that or have their throats cut.

Q. Isn't it also true that in this case both the carriers and the shippers presented their evidence and their argument to the Interstate Commerce Commission, a tribunal fixed by law and the result of that was a reduction in the rates?

The WITNESS: You are speaking of this particular case?

Mr. WALTER: Yes.

A. That is the record I believe. It speaks for itself.

Q. In the one instance you adopted the award of the Arbitration Committee?

A. Yes, sir.

Q. As a mere existence the Mississippi River by means of
 916 the conditions surrounding the movement across the river so far as the Rock Island, the Burlington, the North-Western or the Illinois Central is concerned, there is not a single thing which prevents the carrier putting in a through rate to the Missouri River is there?

A. I do not follow that. The rates are in from Chicago to the Missouri today. It is there.

Q. I will put it in this form: when there is a through rate demanded from the seaboard to the Missouri River, what condition exists at the Mississippi river which renders it necessary for the carriers, like the Burlington, the Rock Island or Illinois Central to have two rates, breaking on the Mississippi River instead of having a through rate?

The WITNESS: As it is under the order of the Commission you mean?

Mr. WALTER: No. What natural condition which affects the service performed by the carriers at the Mississippi River, determines that that is the breaking point?

A. I told you two or three times first the official classification. You cannot add it to the western classification.

Q. That is purely fixed by action of the carriers isn't it?

A. Yes. It is not fixed or has anything to do with the action of the carriers involved in this case. We have no control whatever over the rates New York to St. Louis.

Q. But the carriers who transport from here to the river
 917 do adopt the official classification on traffic up to the river?

A. They adopt the through route of which they are part, over which through route applies the official classification?

Q. Do you know that the carriers which run out of Chicago to that river can if they want to refuse to concur in that rate?

A. A man can jump off the top of a building if he wants to, but we are not going to. We cannot refuse to carry and do the business.

Q. Is there a single line coming into Chicago which hauls traffic out of Chicago to the Mississippi river crossings?

The WITNESS: You mean from the east?

Mr. WALTER: Yes.

A. There is one.

Q. That same carrier goes on to the Missouri River cities doesn't it?

The WITNESS: Let me qualify that. That line does not carry its traffic through Chicago.

Q. You are referring to the Wabash?

A. Yes.

Q. There is the same carrier which operates on to the Missouri River cities?

A. Another line of its road.

Q. It is a through road and operated as such?

A. Yes. Not from the seaboard.

918 Q. From Buffalo?

A. That is not the seaboard.

Q. Is there any reason why the carriers should refuse to fix a joint rate to the Missouri River cities which is not just as potential to the Mississippi river cities as the Missouri River cities?

A. We cannot fix a rate from the Mississippi to the Missouri River as a part of a joint rate, different from the local and do it potentially without prejudice.

Q. That is your opinion?

A. That is a fact. There is no opinion about it.

Q. Has the Commission reduced the local rate at all?

A. No sir. That is just the point I say.

Q. The local rate from Chicago up to the Mississippi River is about 38 cents?

A. Yes anywhere from 38 to 40 odd.

Q. You make your proportion of the through rate less than half of that don't you?

A. No, sir we do not make a proportion of the through rate. I do not want the impression that we deliberately, independently, and without consultation or conference make a rate from here to the Mississippi River on business going beyond. We do not do anything of the kind. There is a joint rate made from the seaboard to the Mississippi River, and it divides on percentages at Chicago.

919 Q. You stated that you could not put in between the rivers a rate applicable to through business which was less than the local rate between the same points?

A. I did not say that. You asked the question whether we could do it with the same potential effect to both interests and I said no.

Q. To what both interests?

A. The Mississippi and the Missouri River.

Q. Can you give me any reason which the Wabash can urge upon the carriers out of Chicago which would cause those carriers to put in a joint rate as far as the Mississippi River and refuse to do it to the Missouri River cities?

A. I do not follow that. You will have to give me the points of origin and destination. You speak in so general terms about through rates.

Q. Take seaboard traffic of the first class, you say that because of the influence of the Wabash you make a through rate to the Mississippi River of 87 cents or 88 cents?

A. No I did not say anything of the kind. We do not make any rates from New York to the Mississippi River. I am speaking now mind you of the Missouri Pacific.

Q. You are speaking here for the carriers that operate out of Chicago?

A. I am speaking in a general way for them.

920 Q. From their view point you say that they concur with the eastern carrier in making a rate up to the Mississippi River on seaboard traffic because of the effect of the Wabash?

A. No, I did not make any such statement.

Q. Is that true?

A. No.

Q. Can you give me any reason?

A. Yes sir. The New York Central lines composed of the New York Central, the West Shore, the Lake Shore, the Big Four, operating to the St. Louis gateway, the Pennsylvania lines from New York over the Pennsylvania system and over the Panhandle so-called, and the Vandalia, the Baltimore & Ohio operating over the B. & O. and B. & O. Southwestern to St. Louis, make these rates on 117 per cent of the rate that is made to Chicago. The Wabash has nothing to do with it because they don't reach the seaboard.

Q. Those carriers have operated to St. Louis for many years most of them?

A. Yes, sir.

Q. While they were in operation you had the rate break on Chicago didn't you?

A. No we never broke on Chicago.

Q. It was made up on the rate in to Chicago plus the rate from Chicago to the Missouri River wasn't it?

A. Yes, class rate that is.

Q. Isn't it just the same identical effect as that that takes place today on the Mississippi River?

A. Practically only in another form.

921 Q. It is a simple difference of words?

A. Difference of methods.

Q. Can you tell me any power or force which these carriers apply now which compels you to join with the road from the east into

Chicago under a rate from Chicago to the river which makes a total of 87 cents as a joint through rate, which those carriers did not exert long before you moved the breaking point from Chicago to the Mississippi River?

A. The conditions are no different now than then. I have told you that prior to the application of the 116 per cent then and 117 now to the upper river crossings, there were other forms of doing this equalizing, forced on us by these same carriers as they force it on us today, because they carry the official classification to the Mississippi River and by the addition of fixed rates west under another classification make the through combination which is the maximum that we can get through Chicago.

Q. Let me ask you this, the Chicago Rock Island & Pacific, the Chicago Burlington & Quincy, the Chicago Milwaukee & St. Paul, the Chicago & North-Western, the Chicago & Great Western, the Illinois Central, the Atchison, Topeka & Santa Fe, the Chicago & Alton, the Missouri Pacific, the Missouri Kansas & Texas, the St. Louis & San Francisco, Railroad Companies can if they want to adopt the official classification and apply it to all traffic in the 922 territory in which they operate?

A. Of course they can I suppose if they arbitrarily insist on cutting their rates with a pen. I do not know of any railroad in the country that would voluntarily cut its rate by giving the usual notice to the Commission.

Q. Don't you know that you can put the classification without reference to the rate?

A. It makes just the same effect. If you cut the official classification you cut your rates.

Q. Are you speaking to me as a strictly railroad proposition?

Mr. WALTER: Yes.

The WITNESS: Without regard to public sentiment?

Mr. WALTER: Yes.

The WITNESS: We can commit suicide if we want to.

Q. Would the public agree?

A. I should say not.

Q. To get back to the exact statement you made, you say you cannot change the classification because it affects the rate. Isn't it true that you have changed the classification in western classification, that is changed the articles from one class to another by the hundreds in the last five years?

A. We are changing classification all the time. I did not say we could not change the classification without affecting the rate just the way you have got it there. We can adopt a classification 923 but we cannot do it in the western territory without by that act reducing the rate, because they are classified lower in the first place and they involve a mixture that is ten times greater than is applied in the western.

Q. Isn't it true that the official classification contains many articles which carry the identical same classification in the western?

A. Yes, I think it is. While they carry the same classification on a great many articles they carry a rule, and a rule is just as much

a part of the rate as a tariff is a rate, and frequently is the controlling force in the application of the rate. In the official classification nearly every article that is rated as fourth class or fifth class we will say in car loads may come in fifth class in mixed car loads, but you apply the car load rating on the small lot of each of these different articles in the car. That is not true in the western. There is a vast difference in the application class for class when you apply that rule.

Q. Isn't it true that every year the official classification and the western classification contain a greater percentage of commodities or classes which are the same, in other words the two classifications are approaching a point where they will be uniform?

A. They are trying that now.

924 Q. It is being worked out substantially?

A. They are trying it the best they can. Understand all ways that rule modifies that action that you mention there very materially.

Q. What is the rule?

A. The mixture.

Q. There is no reason why if the official classification contains a different rate on less than car loads the western could not have the same rule?

A. Yes there is. We do not make the same rate per ton per mile.

Q. I am speaking of classification only?

A. A classification is a rate. If an article is rated first class which will be 60 cents from the Mississippi to the Missouri River and you make that article second you reduce the rate 15 cents a hundred. So you cannot separate it. The classification makes the rate.

Q. Laying aside rates for the moment, is not all that these classifications do so far as the effect on the traffic is concerned to gather together articles of a like nature requiring like treatment and costing substantially the same to the carrier, so that you have them in those classes of that kind on the same substantial basis when presented for shipment?

A. I did not quite get the force of that thing.

925 Q. I ask if the only purpose of having a classification is not to bring together in condensed form traffic of a like nature requiring a like service from the carrier and substantially similar expense?

A. Various rules in connection with it.

Q. That is done by classification only?

A. Yes sir.

Q. After you get all those articles together you fix a rate?

A. Yes.

Q. On all those articles?

A. All those classes.

Q. You do that in order to have no discrimination between rates on traffic of a like kind?

A. When we make our classification we make it into classes and make our rates on those classes. That makes a like rate for everything in that class.

Q. Because you do not want to discriminate between these kinds of traffic?

A. We certainly make a different rate on different commodities without necessarily discriminating.

Q. These articles grouped under one class take the same rate?

A. Yes.

Q. If for example you have got commodity A under class 1 and every other commodity handled by the railroad similar to that is in Class 4 then article A is taken out of Class 1 and put in Class 4 with the rest of these like articles?

A. Now I do not get that. Are you speaking of starting with one class and then making other classes?

926 Q. No, you have got five classes, you have got in Class 1 article A that ought to be in Class 4 because every other kind of traffic similar to A is in that class?

A. The word because is very broad. There is no sentiment about it. The rule of changing it from one class to another is based upon the application of the various rules that make up the classification. It is so changed all the time. We change a class not because there are other articles similar to that in the class but because it comes up to the measurement of the rule which we adopt.

Q. Isn't it true that when you change an article from one class to another you consider whether the other articles in the class to which you propose to transfer this given commodity are like in character and service rendered?

A. There are a great many things to take into consideration. Perhaps that is also considered but it is not the governing factor.

Q. You would not consider whether you were discriminating against or in favor of other kinds of traffic?

A. No. When we change it we change it according to its density per cubic foot for instance, its value, its likelihood to damage and all those different things, bulk and facilities for particular shipments, volume of business and all that sort of thing. We are governed by the same rule in changing classification as in making it originally.

927 Q. You have been a member of rate committees, fixing rates?

A. Yes sir.

Q. It is all done by agreement among the interested carriers isn't it?

A. It used to be.

Q. Isn't it true now that before you change a rate you consult all the carriers operating between the points?

A. We consult and confer.

Q. It is a very exceptional occurrence where one carrier changes its rate and the other carriers hold out against it?

A. Not if they want the business. It is a very rare occasion of course. They do it sometimes.

Q. You say it is not true that the rule in this country in making rates is that the through rate over a long distance should be less than the sum of the local rates?

A. I said so.

Q. Can you give me a single instance between seaboard territory and Chicago territory where the rate in to any one of these cities plus the rate out to Chicago is not greater than the through rate?

A. No I do not think I can in that territory.

Q. Not a single one?

A. I don't think I said anything about that territory.

Q. I ask you about it?

A. All right.

Q. You say you know of no such a condition?

928 A. I do not know of any. I do not say there are not any.

Q. So that Cleveland, Toledo, Pittsburg and all central Freight Association Territory cities compete with Chicago in this business in the west upon a basis by which their rate in and their rate out is greater than the rate in to these cities from the seaboard?

A. When you say compete you have got to take a whole lot of things into consideration. The man who makes boilers and engines out here don't make up his stuff in New York. He makes it here. The United States Steel corporation does not buy their stuff in New York they make it at Pittsburg.

Q. They have to get their supplies, isn't that true?

A. Yes.

Q. If any one of them do dry goods business as jobbers or wholesalers or manufacturers in competition with Chicago in this territory in the Missouri River valley they do it with the rate in plus the rate out greater than the through rate?

A. If they do, but that is like the cheese again. There is no such jobbing interest that I know of.

Q. Do you mean to say that there is no jobbing interest in Cincinnati?

A. No, I do not believe or never heard of any particular jobber of dry goods in the C. F. A. that was shipping to the Missouri River.

If he is doing it what you say is true if he gets his supplies
929 from the seaboard.

Q. I will ask you if there is a single person there that does business that does not do it on the basis of his rate in and his rate out greater than the through rate?

A. I suppose he does.

Q. Notwithstanding that that is a fairly prosperous community?

A. I suppose so. It doesn't prosper on dry goods.

Q. Where do you get your figures upon which you say that \$140,000 is the loss based on 1906 business?

A. I got them from the Association.

Q. From where?

A. Here in Chicago, the Association.

Q. You did not make those figures?

A. No.

Q. Have no connection with them in the world?

A. No.

Q. There are men who know whether those figures are true or not?

A. Yes.

Q. You don't know?

A. I assume they are.

Q. It is a pure assumption?

A. It is a very logical assumption.

Q. These are interested parties are they not?

A. No.

Q. Why aren't they interested in having this rate kept up?

A. Not a bit, they are our own employés.

Q. Your company is not interested in having this rate maintained?

A. Yes we are.

930 Q. How is it that these employés have no interest in this case?

A. They have no more interest in that than the Mayor of Chicago or as much perhaps. They take the figures from the way-bills that are presented to them by the carriers and compile them. They have no interest except to get the truth.

Q. Their employer whose service they are performing is interested to the tune of \$140,000?

A. I am not going to be put on record as casting aspersions on the honesty and integrity of these gentlemen merely because they are in the railroad service.

Q. Can you say of your own knowledge that these figures are correct?

A. I did not make them.

Q. That is all you know, that they were handed to you?

A. Of course. It is all I know about a good many things. I don't know that we have a constitution made in 1780 but I believe it. I was not there.

Q. That is a pure matter of history?

A. So is this and don't you forget that.

Q. You have got figures kept by men who know these figures haven't you?

A. Yes.

Q. And they are the men who can testify as to whether they are correct or not?

A. Yes sir.

Q. You cannot do that can you?

A. I cannot testify that somebody did not deliberately mis-
931 represent. I cannot testify that they did not make a mistake.

Q. You cannot say that they did not just simply give you a statement of \$140,000 and you don't know whether it was true or not?

A. It is taken from the reports that they annually compile and send out in the usual course of business.

Q. How do you know it is?

A. Because they acted under our instructions and we gave them the raw material to work on.

Q. They tell you, isn't that all you know?

A. They do not tell us anything. They hand us the sum total of all this business as reported by the different carriers.

Q. On your oath can you say that your instructions were carried out?

A. No, he may have assassinated the figures for all I know. I did not make these figures.

Q. But there are men who are perfectly capable of testifying who did make these figures?

A. I think so.

Q. That covers all the traffic of the first five classes carried between the Mississippi and the Missouri Rivers?

A. Yes I suppose so.

Mr. McHUGH: Without regard to destination?

Mr. WALTER: Based on the tonnage of 1906?

A. Yes sir. That statement of yours is too broad. That don't comprise all of the traffic by any means, this statement that
932 I am quoting here. It is the traffic from what is known as the seaboard territory to the Missouri River points mentioned, Sioux City to Kansas City, etc.

Q. That is the only traffic that has any reduction in its rate?

A. You said all traffic and that makes a whole lot of difference.

Mr. McHUGH: You have not answered the question.

Mr. WALTER: Is that the only traffic that is affected by this rate?

A. That is the seaboard territory is the only one. The direct order of the Commission is to the Missouri River cities mentioned in the statement from which I gave you this information.

Mr. McHUGH: He is asking if that is all.

The WITNESS: What do you mean by the word affected?

Mr. WALTER: The traffic which the Commission directs its order to, namely, seaboard traffic of the first five classes destined to Missouri River cities only.

A. The statement covers that business.

Q. Nothing else?

A. The statement that I am speaking of covers nothing else.

Q. What was the tonnage of first class carried between these places?

A. That I cannot remember. I can get it for you.

Q. Second class?

A. I don't remember.

933 Q. Third class?

A. I don't remember.

Q. Fourth class, can you give any one of the classes?

A. Not from memory. I can get them.

Q. Have you seen the tonnage figures of first class traffic seaboard origin destined to Missouri River cities?

The WITNESS: As reported by the Association?

Q. As given to you by the people who furnished you this statement?

A. I have seen the statement. I have not seen the traffic. I have seen the statement of the traffic.

Q. Don't you know that the figures published by the Western

Trunk Line association are not confined to Omaha, Kansas City, St. Joe and Sioux City, but include many other points in that territory?

A. Not these figures don't.

Q. Let me ask you if you have any statement given to you by anybody which gave you the first class tonnage of seaboard traffic carried in 1906 between the rivers to these points only?

A. Yes.

Q. Missouri River points only?

A. Yes, sir.

Q. What did that show?

A. I tell you I cannot remember it. I can get it for you in two seconds if you want it.

Q. Have you any estimate?

A. I am not going to give you any estimate. If you want the figures I will get them.

Q. Who gave you these figures?

A. I told you the Association.

934 Q. What man?

A. Mr. Hosmer.

Q. Who is Mr. Hosmer?

A. Chairman of the Western Trunk Line Rate Committee.

Q. Did Mr. Hosmer prepare these figures?

A. They were prepared under his supervision. I don't know whether he put them down or not.

Q. You don't know whether he did or somebody in his employ?

A. No.

Q. All you know is that Mr. Hosmer handed you certain figures?

A. Yes.

Q. Mr. Hosmer is more capable of testifying as to the correctness of those figures than you are?

A. Yes sir. But Mr. Hosmer did not make any special report. He took a report that has been in existence for two or three years without regard to this case at all and simply made an epitome, a summary.

Q. Is that report a report of the Western Trunk Line Rate Committee to the various carriers?

A. Yes.

Q. You do know as a matter of fact that that report does not segregate these points of that business?

A. I tell you that the statement is from seaboard to the Missouri River Sioux City to Kansas City inclusive.

Q. And includes only Missouri River cities affected by this rate?

A. This report, yes sir.

Q. I understood you to say this morning that you could
934½ not *not* reduce this rate because it destroyed or broke a system?

A. Did I. I do not recall it.

Q. Is that true or not?

A. We cannot reduce the rates without destroying the relation between the cities.

Q. Let me ask you if that being true there is any possible way

in the world to reduce a rate that is unreasonable and has been so for many years?

A. Oh yes.

Q. How would you do it without changing relations?

A. You can't change the relation of two sticks as to length or thickness without trimming one or lengthening the other. Of course you cannot change a rate for one and not change it for the other without creating a difference.

Q. Suppose shipper number one has been competing with shipper number two and shipper number one for twenty-five years has paid 15 cents more than was just and reasonable and shipper number two has paid always a fair and reasonable rate, is there any reason that you can see why number one should have to pay any longer an unreasonable rate?

A. With a very marked accent on the assumption I would say no. Assuming that those conditions are true, no.

Q. The only points and the only traffic covered is seaboard territory as point of origin with the Missouri River cities as the point of destination of articles of the first five classes.

935 The WITNESS: In this order?

Mr. WALTER: Yes.

A. The order speaks for itself.

Q. I am asking you for your understanding?

A. I understand it as it reads.

Q. Is that the way it reads?

A. I don't know whether it does or not. I will have to read it again.

Q. You are testifying as to what the effect of this order is?

A. I think it reads that way but if you are so technical as to whether I know of my own knowledge I did not see the order even. I only saw a copy of it.

Q. As to the copy that you saw do you remember what was in that copy?

A. I think I do.

Q. Did it cover any other points of origin than seaboard shipments?

A. Directly no. Indirectly yes. Even directly yes.

Q. Only indirectly as the carrier sees fit?

A. No sir, as a matter of fact, as a downright plain business proposition it is there. It covers every territory, every point except these little exceptions west of the Missouri and east of the mountainous country.

Q. The Commission does not change the rate up to the Mississippi River does it?

A. No sir.

Q. It simply says that on traffic which originates at the seaboard and is carried through Mississippi River points destined to the Missouri River cities it shall apply on that traffic for the haul between the rivers in connection with the 88 cents, 51 cents only?

936 A. Yes sir that is what it says. But it also says that it covers every point west. The man in Wichita or Grand Island or Denver

or Salt Lake or any of those other points all he has to do it to send his stuff to the Missouri River and re consign it. How can you get away from it?

Q. There would have to be a delivery by the carrier to a party at the Missouri River city wouldn't there?

A. No sir.

Q. And rebilling and reshipping?

A. No sir there would not have to be any delivery of the traffic by the carrier to the consignee and reloading. He can consign it after he pays his freight at the Missouri River and gives up his bill of lading. That transaction is ended. He can then in the same car consign it to Denver. You cannot stop him. The Supreme Court has said so.

Q. Isn't it true when he gives up his bill of lading he takes the property under his control?

A. He never takes possession of it, he gives the order then and there.

Q. I am speaking of the legal phase of it. You know very well do you not that the carrier never does send the traffic on after it has reached its destination unless it there has an order from 937 the consignee to take it on?

A. Of course. He would not know where to send it. That order is given at the same time the freight is paid.

Q. When the freight is paid then the service performed by the carrier or contracted to be performed is ended.

The WITNESS: From the east?

Mr. WALTER: Yes.

A. Yes sir.

Q. Don't you know that on any traffic that comes from the seaboard and goes beyond the Missouri River you can make any rate you see fit under the order of the Commission without violating the order made by the Commission?

The WITNESS: You mean that we can make lower than that?

Mr. WALTER: Yes, or greater either, without violating the order of the Commission?

The WITNESS: That we can on traffic from the seaboard delivered to us at St. Louis make a rate from St. Louis to the Missouri River greater than the order allows?

Mr. WALTER: No that is not the question. Suppose the traffic originates at seaboard territory destined to Denver, as I understand the present situation there is a rate up to the Missouri River plus the rate beyond?

A. Yes.

Q. As I understand your argument you contend that because 938 the Commission reduced the rate to 51 cents on the traffic destined to Missouri River cities, you would have to reduce it on the Denver traffic?

A. For the Mississippi Missouri River haul.

A. You do not do it on trans-continental traffic.

A. It wouldn't do any good because the rate is lower.

Q. You make a different rate when it goes to Montana common points?

A. Possibly, not necessarily. If the through rate today from the Mississippi River to Montana is affected by the addition of this 51 cent scale to the local scale from Missouri River to Montana then it does affect it and if not it does not.

Q. You do not do that do you?

A. I did not figure it out. I made an exception you understand of Montana.

Q. Isn't it true that the carriers do between Chicago and Missouri River charge, accept and retain for carrying trans-continental traffic originating at the Atlantic seaboard and destined to the Pacific coast terminals of the first class 33 cents?

A. I don't know the exact figures.

Q. Isn't it true that when the traffic originates at Chicago and is destined to Oklahoma common points you charge for transporting first class traffic from Chicago to Missouri River points 48 cents?

939 A. I do not believe it. I am satisfied it is not true.

Q. How much is it?

A. The rates from Chicago to Oklahoma are not one rate. They are various rates. Which Oklahoma points do you refer to?

Q. Oklahoma City?

A. I do not know. Those figures may be correct.

Q. Don't you know they are correct?

A. No, I don't know the exact figures. I know that it may be perhaps less than the local.

Q. Don't you know that on traffic originating at Pittsburg carried through Chicago from Chicago to Missouri River points on first class you retain only 41.8 cents?

A. I don't know.

Q. Do you say that is not correct?

A. I don't know. The way that statement reads I don't understand it I think there is a mistake in it anyway.

Q. When destined to points beyond the Missouri?

A. There are various rates when destined to points beyond. Oklahoma is different from Kansas and Kansas is different from Colorado.

Q. There is no uniformity at all is there?

A. Joint through rates and divisions have no uniformity.

Q. Don't you know as a matter of fact that you charge, collect and retain on identically the same traffic, originating at the same point, rates varying from 40 cents to 74.7, depending upon the destination?

940 A. They vary very materially. I do not know just the figures.

Q. (The last question was repeated.)

The WITNESS: Where is the destination?

Mr. WALTER: Any point west of the Missouri River.

A. It is a fact that the divisions of joint through rates from Chicago to the Missouri River varies according to some destinations.

Q. And they vary from 40 to 74.7 cents?

A. I am willing to accept your figures. I don't know.

Q. Will you say that that is not true?

A. I would not say whether those figures are true or not. I say there is a difference. Don't commit me to the figures.

Q. You are a rate man?

A. Yes.

Q. You come here and say you understand rate making?

A. I do.

Q. And the rates made?

A. Yes sir.

Q. And these rates are just as open to you as anybody else?

A. You do not for a minute think any railroad man in this world will carry the divisions of every joint rate in existence?

Q. You know that these rates are fixed in tariffs and that you keep these tariffs and keep informed as to what these tariffs
941 contain?

A. Yes sir. The through rates are fixed in tariffs.

Q. In your office you keep the divisions of every rate that you participate in?

A. Yes but I do not carry them in my head.

Q. Is not the sole reason for desiring to retain the breaking system, on the part of the carrier the fact that it gives you for your service on through movements the highest rate you have namely the local rate?

A. We do not carry our rates exclusively on the fact that it gives us the greatest possible rate we can get, because this is impossible. If it were true we would not have any of these figures you mention. It is competition that makes the changes. As I said at the start I know of no railroad man who deliberately and voluntarily accepts on a through service less than his local except when competitive conditions require it.

Q. Isn't this true that the competition on the part of the carriers operating between the rivers is just as potential or should be so far as the carriers are concerned as the competition between New York and the Mississippi River?

A. I suppose the competition is just as fierce all over this country. I do not know of any exception.

Q. So that you cannot explain the difference in those rates on any competition made by the carriers?

942 A. Yes I am saying I see no reason for voluntarily cutting our revenue.

Q. Will you say that the rate from Omaha to Denver is the same rate as the rate from the first station to the second plus the local from the second to the third the third to the fourth the fourth to the fifth and so on?

A. No I will not. I said very emphatically a few minutes ago it is impossible to make the rates break on the sum of the locals at each point in the United States.

Q. So it is not true is it that through the west the through rates are the same as the sums of the locals?

A. On these basing points.

Q. So that all you spoke about was traffic that goes to the Mississippi River or to the Missouri and carried through there?

A. And to Denver and Salt Lake and California terminals coming back, St. Paul and St. Paul west and the Ohio River and the southeast and local out again, southeast to New Orleans and local out again.

Q. Name the points west where this applies?

A. Commencing at St. Louis on traffic from the east of St. Louis, not including Illinois, they break first at St. Louis, they break again at Omaha and Kansas City, they break again at Denver, they break at Salt Lake, they break at the Pacific coast terminals. From the

east for St. Paul they break there except these points in the 943 map which I have outlined.

Q. Please name the basing lines east and west on traffic going from the east to the west.

A. I understand you want facts. The Missouri River generally speaking is a basing line, but the Missouri River cannot be considered as a unit in basing for this reason, rates via Omaha do not break into Southern Kansas, rates via Kansas City do not break into north-western Nebraska rates via Kansas City do not break in the territory where they do not break in Sioux City. Each has its own territory, although it is not on the same line. So I cannot very well answer you.

Q. If articles are destined to Ogden, originating at the seaboard, give the breaking points on that traffic?

A. There they would break at the Mississippi River and at the Missouri River.

Q. When it is destined for Denver where do they break?

A. At the same points.

Q. When destined to Salt Lake City?

A. Same as Ogden.

Q. San Francisco?

A. They break at San Francisco and Sacramento.

Q. Is there any other intermediate breaking point?

A. Not on California traffic, not on Ogden and Salt Lake traffic and not on Denver traffic.

944 Q. Any traffic that was destined to a point between Denver and Ogden would break just the same as the Ogden breaks?

A. They break at Denver except certain territory that is in the neighborhood of Salt Lake which we call common. It runs down I think about 40 miles south.

Q. On traffic which originates at a point west of Missouri and east of Denver designed to Ogden is there any breaking point on that traffic?

A. I think not. It is on one line all the way.

Q. To be perfectly fair, aren't there only these four or five base lines on traffic moving from the seaboard, and that on traffic which originates in the west and going to a point beyond several hundred miles it takes a rate—beyond the base line—it takes a rate which is less than the sum of the local rates?

A. Sum of the local rates on what?

Q. Between the same points of origin?

A. Take a shipment if you please from a point on the Union Pacific in Nebraska for Salt Lake. There may be two hundred intermediate points. They do not break on each of these or any of them that I know of because the line is one railroad and goes through continuously.

Q. Suppose we take Topeka for example which is on more than one railroad, traffic originates from Topeka and is bound for Grand Junction, there is a through rate on that traffic?

945 A. No.

Q. How is that rate made?

A. Denver and Denver points.

Q. Does all traffic originating at Topeka break on that?

A. Going to Grand Junction and all Colorado points.

Q. Take it to Ogden?

A. No it is through. Missouri river rate generally. It is competition that forces that.

Q. That rate is less than the sum of the locals into Colorado points, plus the rate beyond?

A. To Ogden and Salt Lake.

Q. So that in all this territory there is prevalent a system of rate making similar to that which occurs east of Chicago with the reservation as to these base lines that you have mentioned?

A. Wherever there is a road that has its rails from point of origin to destination you will find as a general rule they continue the haul on to destination, but the Union Pacific and Southern Pacific being one system do not carry through rate for Ogden and Nevada. They break again. They break even on Colorado back, whichever is lower.

Q. Suppose traffic originates at Omaha and is going to Cheyenne, that takes a through rate?

A. A continuous rate. That is what we call a local rate.

Q. All right call it a local. That rate is less than the rate to Grand Island plus Grand Island to Cheyenne?

A. I suppose so. I think it is.

946 Q. That concrete illustration is a fair example of making rates under that condition?

A. Under these conditions. There are exceptions to that.

Q. Before we leave this, you say that the only reason why a through rate is less than the sum of the locals is competition. What competition is there on the business from Omaha to Cheyenne that does not exist on business from Missouri to Grand Island and Grand Island to Cheyenne?

A. I made myself very clear and your promises are not the same as I mentioned. A through joint rate is not a local rate. Where there is a through joint rate my statement is correct. Where there is a local rate I did not make a statement that there was a break. There is a local haul if you please however from Chicago to Denver over the Rock Island, over the Santa Fe, over the Burlington. There is a local haul from St. Louis over the Missouri Pacific to Pueblo. Those are over one line having its rails from the start to

the finish. It is not joint but it breaks in the middle because of commercial conditions and competitive conditions.

Q. Is this true that the longer haul takes a less rate per ton per mile than the traffic which is moved for only a part of the distance over the same rails?

A. Over the line of one railroad generally speaking the longer haul is a lower rate per ton per mile than the shorter haul.

947 Q. You recognize that in making rates on your road?

A. Yes. There are notable exceptions to that. The rate from Chicago and from St. Louis to points west of the Missouri River in Kansas and in Nebraska and in eastern Colorado are not on the theory that you speak of there, because the rates are based on the sums of the locals at the Missouri River. The local rate west of the Missouri River is a greater rate per ton per mile than the local rate east of the Missouri River and when you take the long haul by combining these two and plaster over it in its entire length that rate per ton per mile you have got a greater rate per ton per mile for the haul from St. Louis and Chicago to the Missouri River than on local traffic, and you have got a less rate per ton per mile west thereof. So those exceptions are very general.

Q. Isn't it true that in making rates you charge less per ton per mile for the long haul than for the short as a general proposition?

A. Over one line of road.

Q. I am asking as a general proposition.

A. No, I won't say that. I say over one line of road. A continuous rate is made wherever there are no commercial conditions that force the break.

Q. You are well aware that the great expense and cost of
948 a railroad is its terminals are you not?

A. The greatest cost per ton——

Q. I am speaking now of the capital invested?

A. I don't know.

Q. Take the Illinois Central is not its terminals by far the greater portion of its investment?

A. I do not know that it is. It may be. I can tell you a good many roads where it is not. The Great Western hasn't got a terminal on the road.

Q. They pay rental for the use of the terminals which they use?

A. Yes.

Q. That is based on the amount of capital invested in those terminals?

A. I don't know whether it is or not.

Q. It is based on the share which it has with the other roads in using the terminal?

A. Perhaps, I don't know.

Q. Isn't it further true that the terminal charge on taking traffic originating at Chicago and moving it fifteen miles is by far the greater proportion of the cost to the railroad of handling that traffic?

A. It is the greater proportion.

Q. When you project that terminal charge over a haul of 500

miles doesn't it make a less per ton per mile rate than the local rate?

A. I suppose it does.

Q. Isn't that the reason and theory why the long haul takes the less rate?

949 A. Not necessarily.

Q. Isn't that the controlling fact?

A. I don't know that it is.

Q. Do you know that it is not?

A. Yes, I think I know that it is not.

Q. Why not?

A. You can take a haul from the Missouri River to Cheyenne if you please and take your terminal at both ends and then take what is left on a rate per ton per mile and you will find the longer the haul is less than the shorter exclusive of the terminal, over a line of continuous road, because that is the method of making distance tariff by railroads by commissions and by everybody else.

Q. What reason that you know of is there why the Wabash should not publish a through rate from Buffalo to the Missouri River?

A. Because they do not add the two classifications I told you, for one reason and the other is commercial conditions.

Q. Take dry goods at Buffalo you say the rate is 65 cents?

A. Yes.

Q. Under the official classification?

A. Yes.

Q. The Wabash knows that?

A. Yes.

Q. And puts it on the bill of lading.

The WITNESS: What the rate?

Mr. WALTER: Yes.

The WITNESS: It don't make any difference.

950 Q. Does that same bill of lading contain the rate from Mississippi River to Missouri River?

A. I don't think it does. I don't think any bills of lading contain the rate any longer. They do not amount to anything.

Q. They know at Buffalo what the rate between the rivers is on that traffic don't they?

A. I suppose they do.

Q. What reason do you think of why it should not be added together and a through rate published?

A. Because these commodities are all covered in classes. If they start to pick out a certain commodity and make a through rate they would have to do it on all the commodities before they got through, and they would have as many through rates as articles in the classification, and so would defeat the principle of classification which is to group these articles in six different classes.

Q. We have got only five classes involved here?

A. Yes.

Q. The Wabash knows what the rate is on these five classes?

A. Yes, sir.

Q. That is five rates only isn't it?

A. Yes sir.

Q. And we have five rates from the Mississippi River to the Missouri?

A. Yes, sir.

Q. You have got ten rates?

A. Yes sir.

Q. And the only reason why is because it would necessi-
951 tate changing ten rates into five rates?

A. No. I understand you do I that you suggest for the sake of argument that the five classes from Buffalo to the Mississippi River be added to the five classes west and a combined rate on five classes made, is that your idea?

Mr. WALTER: No, you say that the rate to the Mississippi river is five classes?

A. Yes, sir.

Q. The order only affects five.

A. The order doesn't affect any east of the river.

Q. It only affects five beyond?

A. Yes.

Q. It would not affect more than six east?

A. I don't think it affects any east.

Q. Then the only rates necessary to make through rates would be five?

A. If you want class for class five is all you need.

Q. So that there is no reason other than that that you know of why the Wabash could not make a through rate?

A. Yes it would not amount to anything if made, for this reason, it would make the rate higher than the sums of the locals.

Q. That would depend on whether they made it higher?

A. You might add five classes Buffalo to Hannibal or St. Louis with the five classes thence to Kansas City and make a through rate of five classes but not for greater than the sums of the local
952 rates in and out of the Mississippi River.

Q. That is done is it not from the seaboard territory to the Pacific coast terminals?

A. Not one classification all the way through.

Q. What classification applies?

A. Western.

Q. Why should not the western classification apply on shipments going to a point of territory in this same classification?

The WITNESS: Do you mean for instance Kansas or Nebraska?

Mr. WALTER: Yes.

A. Because there is no necessity for it without reducing our revenue.

Q. Then the only answer is that you don't think it necessary?

A. Commercial conditions would interfere and it would be an absolute waste of money and it would create a discrimination.

Q. Against whom?

A. Against the shipper at the Mississippi River or the Missouri River.

Q. That is the only reason you know of?

A. I have given you three reasons.

Q. Do you know of any other?

A. Three is enough.

Q. Do you know of any other?

A. I might think of a whole lot.

Q. Do you now think of any others?

952½ A. No I do not think of any others.

The right to further cross examine the witness was reserved until an adjourned meeting to be held on Saturday February 27, 1909.

Redirect examination.

By Mr. McHUGH:

Q. In the cross examination you were asked with reference to certain rates into certain points in Iowa where the rates differed with respect to certain points of origin of the shipment. You may state whether that is due to peculiar conditions and what conditions they are that control that?

A. Yes sir conditions peculiar to the state of Iowa. The rates from the east seaboard to Mississippi River crossings from Dubuque south to Burlington are what is known as 122 per cent. of the New York Chicago rate plus. That plus means the bridge charge at Burlington added to the east bank rate making the gross rate into Burlington. Thence it is subject to the Iowa Commissioner's distance tariff out. The rates were put in on the basis of the combination of locals through Chicago, through Peoria, through St. Louis to such

953 points where St. Louis had a differential under the Chicago rate and through the various Mississippi River crossings added to the local out. The rates thus made were compared and the lowest combination was accepted as the through charge. Because of the attitude of the trunk lines at the time when the Interstate Act was established and all roads were at sea with respect to the meaning of many of these things they demanded but one proportionate scale and that was 116. We then subtracted that 116 from the combination thus made and the balance was the proportional rate west. There were some modifications because of the long and short haul clause in that share in Iowa in the relationship of interior jobbing centers, but in the main the combination of the local scale to the Mississippi River and the local scale out approximate the through rate made on the 116 per cent to the Mississippi River and the proportional rates out. When we made these combinations we started from New York City and Boston, Baltimore and Philadelphia. The combination would be exactly the same so far as each of these points are concerned because they are railroad differential. When we got into the interior of New York we took recognized basing points which controlled the basis of rates paid in the surrounding territory and we made another combination. We did

954 that on and on until we got up to the Indiana and Illinois state line. Now we could not make the multiplicity of rates that such combinations would force upon us, but we took
30-663

the basing points within the territory of New York as I said, Ohio and Indiana, around which we grouped a number of smaller points and we made groups of those and we made groups in Iowa so that there is that difference between the adjustment of rates in Iowa on the one hand and Missouri River on the other in this fact that the through from each point being determined by a combination of locals on the Mississippi River, Chicago or Peoria was left after taking the rate up to the Mississippi river varying proportions that could not be unified without a very serious sacrifice of revenue and preserve these groups. I think there are eight. That condition does not obtain to the Missouri River. I made that scale with three other people. One of them is dead, another is out of the railroad service. We made that scale in 1888. I went all through it in detail. Of course I have been out of it for four years. I do not know whether they have changed it materially or not. They have always however adhered to that line of adjustment.

Q. You were asked whether the rate from the seaboard to Montana common points by way of Omaha was not less than the sum of the locals. That I understand is the fact that it is less than the sum of the locals?

A. Via Omaha.

Q. But what fixes the rate to the Montana common points?

A. Combination via St. Paul and Minneapolis.

Q. The rates from the seaboard to the Montana common points are the local to St. Paul and the local out of St. Paul?

A. Yes, sir.

Q. And if the roads running through Omaha to the Montana common points wanted to share in any of that through business they were forced to meet that St. Paul combination.

A. Yes sir.

Q. And that is why that combination by way of Omaha was made?

A. Yes sir.

Q. You have been asked with respect to the rates into Texas being less than the sum of the locals. What condition forces that?

A. Water rates.

Q. The rates from seaboard around?

A. And the Commissioner's rate from Galveston into the state of Texas, that is the State Commission.

Q. You spoke in your cross examination of an arbitration and I may be mistaken about it, but the impression I had was that the question that brought out the answer with respect to that arbitration related to Texas points. The arbitration that you speak of was with respect to what we call the Kansas percentage territory on this map?

A. There were two arbitrations. The arbitration in Texas was with respect to the rates from Ohio River. Years and years ago the rate from Chicago covered a territory in competition with that served by Ohio River lines. The Santa Fe railroad having its rails from Chicago to Texas established its rates continuously over its own line from Chicago in competition with the rates in the territory

affected by the adjustment of the arbitrators. The Southern Pacific in meeting from Chicago the rate thus made carried through the Ohio River and thereby extended these rates by joint tariffs in competition with the direct one line through a certain portion of Indiana. The same conditions existed for making the differential from Chicago to Texas over the St. Louis rate by the one line of the Santa Fe as existed in making the rate from Chicago to the Missouri River over the various single lines as against St. Louis.

Q. On this map wherever it appears combination on Missouri River or combination on St. Paul or combination in any way that indicates that the rates are made by having the through rate the sum of the locals?

A. Yes sir.

Q. Now with respect to the figures that you use, when you speak of the decrease in revenue, these were figures that were prepared in the ordinary course of business?

A. Yes sir.

Q. Before this law suit was started?

A. Ever heard of.

Q. And were prepared without any reference to this case at all?

A. Yes.

Q. And are the figures on which the railroads base all their calculations?

A. Yes sir.

Q. And compiled for that purpose?

A. Yes.

Q. You have been asked whether the railroads do not accept on joint through tariffs a proportion for the haul between the Mississippi and the Missouri Rivers less than the local rate, and figures were named. You may state what is the compulsion that operates to induce the railroads on trans-continental business to participate in it and share in the through rate in the proportional that they accept?

A. The rates from the seaboard by water, as shown on that map, through Panama, as well as independent schooner competition by the Horn have been the governing factors in the all-rail rate from the seaboard to California, in competition by railroads. There was a time when those rates were lower from the seaboard than they were from Buffalo. They were lower from Buffalo than they were from Cleveland and I think they were lower from Cleveland than

Chicago. They were based upon the local rate from the interior to the nearest point where they had access to water and the water rate thence to destination. The natural effect of this was to give to the manufacturing and distributing interests in the seaboard territory practically a monopoly of the trans-continental trade and export. After a series of conferences between the trans-continental roads and the traffic lines in C. F. A. the rates from New York were made the maximum and they apply from all intermediate points as far west as the Missouri River with some few exceptions. That enabled the manufacturer in the interior to compete for this trans-continental traffic. The volume of the rate was fixed by the water. The combination of the various locals into

the basing points within the territory of New York as I said, Ohio and Indiana, around which we grouped a number of smaller points and we made groups of those and we made groups in Iowa so that there is that difference between the adjustment of rates in Iowa on the one hand and Missouri River on the other in this fact that the through from each point being determined by a combination of locals on the Mississippi River, Chicago or Peoria was left after taking the rate up to the Mississippi river varying proportions that could not be unified without a very serious sacrifice of revenue and preserve these groups. I think there are eight. That condition does not obtain to the Missouri River. I made that scale with three other people. One of them is dead, another is out of the railroad service. We made that scale in 1888. I went all through it in detail. Of course I have been out of it for four years. I do not know whether they have changed it materially or not. They have always however adhered to that line of adjustment.

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Chicago or St. Louis and St. Louis to Kansas City and Kansas City to Ogden and so on were too high. The business would not move on such combination. The figures were established by water and that is all we had to get in order to secure this traffic. It was that or nothing.

Q. As you say if you were paid more than the cost of the actual haul it contributed that much to the expense?

A. Contributed that much to the operation of the train.

Q. Is that same thing true of the through rates to Texas points?

A. That is true of the through rates to Texas. The rates
959 from the seaboard territory are made to Texas, outside of this muss we are having at present—even in a more comprehensive way.

Q. It is either take that rate or not participate in the business?

A. Yes, sir.

Q. You said that there were three reasons why a railroad running across the Mississippi River like the Wabash could not establish rates and ignore the breaking at the river and why railroads that run through Omaha and Kansas City to the west could not make through rates and ignore the breaking at the Missouri River, and you were asked in detail about some, and you mentioned commercial conditions as one. Explain how the commercial conditions prevent that?

A. If the through rates were made continuous by the Wabash it would injure the shipper at Chicago and St. Louis in securing a share of the western traffic unless he did so by absorbing out of his profits whatever reduction was made to his eastern competitor. The cities of Chicago and St. Louis have developed since the advent of railroads on the breaking of system at Chicago and St. Louis. The facilities offered by that attracted the shippers there and they developed as the railroads developed and their conditions have been recognized, and to attempt to destroy them would be an impossibility or to attempt to seriously interfere with them would be an impossibility for this reason, there are lines the New York Central
960 and the Pennsylvania that do not run west of the Mississippi River, and if there were a through rate less than the combination of locals it would involve a reduction on their revenue for a similar service and it would interfere with the development of industries on their own rails and naturally they would act with the influence of and always have the influence of the commercial interests that have been built up at these various cities with a view of equalizing by breaking that rate whatever it may be, at the Mississippi River. There is another factor. It could not obtain unless you indicated your particular commodity that you wished to carry through because in adding the two classes east and west you have a combination which is governed by neither one nor the other. It is a through rate and a through consignment must be governed by that rate. The through rate would in many cases be higher than the combination because of the different classifications.

Q. Now where a city like say Omaha, with railroads coming into it from the east and terminating there, railroads beginning there and going west, if a railroad that ran through to the west should

attempt to establish a through rate lower than the locals and stop the breaking of the rates at Omaha how would the competition between
 961 railroads come into play, how could a merchant who shipped in Omaha co-operate with the railroads from the east and west to the harm of the road that attempted to destroy that breaking?

A. That idea was tried with the result that the line east of the Missouri River and the line west of the Missouri River neither of which had its rails on the opposite side, stated to the through routes that if they continued that the division of any rate they were forced to accept for a continuous haul would be their local rates in and out.

Q. How about the merchants giving their business to the roads?

A. They were influenced to that by the uproar at the Missouri River. There has been a constant strife since I have been in the railroads upon the part of the Missouri River merchants to preserve that line. The records of the Association are filled with protests from time to time and of arguments in which they contend with the railroads before arbitrators jealously guarding that privilege.

Recross-examination.

By Mr. WALTER:

Q. These rates from Rock Island into Des Moines, as shown by the Rock Island tariff September 1, 1903, do not make any
 962 through rate from Rock Island to Des Moines except when the points of origin are in Central Freight Association territory?

A. I think that tariff covers seaboard.

Q. Let me ask you if there is any reason applicable to Central Freight Association territory that would not be applicable to seaboard?

A. Not when I made it up.

Mr. ARWOOD: Isn't it a fact that the trans-continental stuff is moved by way of Chicago with the full locals to Chicago collected by the eastern lines?

A. They have a division. Here is the division sheet if you would like to see it.

Mr. WALTER:

Q. Isn't it 72.4?

A. No they have different percentages. They have all kinds of percentages.

Mr. McHUGH: I now offer in evidence a portion of page 23 of the Twenty-Second Annual Report of the Interstate Commerce Commission transmitted I suppose December 24, 1908, as follows, under the heading, "Suits by carriers to annul orders of Commission."

Chicago Rock Island & Pacific Railway Company v. Interstate Commerce Commission. Northern District of Illinois.
 963-965 The Commission ordered carriers between Mississippi and Missouri Rivers to apply rates somewhat lower upon traffic

originating at the Atlantic seaboard than were applied to the same kinds of traffic when originating at the Mississippi River, recognizing the familiar rule that the through rate for the long haul should be less than the sum of the locals for the two short hauls. A temporary injunction has been granted.

Adjourned to Saturday, February 27th, 1909, at ten o'clock A. M.

963 On April 5th, 1909, at ten o'clock, A. M. the parties met pursuant to agreement at the north court room in the Government Building at Omaha, Nebraska.

Mr. Webster made the following statement: Now comes the Intervenor, Burnham, Hanna, Munger Dry Goods Company and others, and reserving unto themselves all objections heretofore made against the right of the complainants to introduce evidence under the pleadings, and contending that all evidence heretofore introduced by the complainants is irrelevant and immaterial and incompetent, and subject to the said objections to the said complainants' evidence and to the right of the court to consider the same, tender the evidence hereinafter introduced by the said Intervenor, to contradict and rebut the said evidence introduced by the complainants, and to refute the inferences and conclusions that might be drawn therefrom, the said evidence so tendered by the Intervenor to be considered by the court only in the event that the court shall conclude that the evidence tendered by the complainants is competent under the pleadings, and if relevant and material, to be considered by the court. It is further understood that this evidence so tendered by the intervenor is tendered in their own behalf alone and that the Interstate Commerce commission does not join in the tender of said evidence.

967 Mr. Walter for the Interstate Commerce Commission objected to the taking of any testimony by the intervenors on the ground that under the issues made in this case no evidence can be considered by the court.

Mr. McHUGH: The complainants will object to any testimony being taken in this cause except the testimony taken regularly to be used in the trial of the case in the regular and orderly practice of courts of chancery, and the complainants and the intervenor complainants do not agree to any of the stipulations or reservations or conditions above mentioned subject to which the intervenors propose to take testimony.

EDWARD J. McVANN, a witness produced on behalf of the defendant intervenors was duly sworn and deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your business?

A. I am Secretary of the Omaha Grain Exchange.

Q. Prior to your connection with the Grain Exchange what was your business?

A. I was in the railroad service from 1885 to 1902 in various capacities, and I have been Secretary and Commissioner for various associations of shippers, beginning with an organization at 968 Dubuque, Iowa, in 1901, followed by Sioux City and Omaha Commercial Club, and my present employment.

Q. You may state somewhat in detail the experience you have had and the opportunities you have had to study the question of railroad rates and tariff sheets in the transportation of freight throughout the country?

A. My first experience in the railroad business was in the general freight office of the Burlington, Cedar Rapids & Northern Railway. I was a rate clerk in that office and gained some knowledge of tariffs and their construction and the manner in which rates were made and applied. After that time for about fifteen years I was engaged in the business of soliciting freight from all classes of shippers. I was in charge of various offices of the Pennsylvania lines in the west, and by reason of the fact that I represented an eastern railroad in the territory of the western railroads I was obliged to be familiar with the tariffs not only of the eastern railroads but of the western railroads as well, and also with classifications; and during those years I became familiar with the rate adjustments on the Mississippi River, on the Missouri River and from the seaboard to both the Mississippi River and the Missouri River, and the rate adjustments from Chicago and St. Louis to the Missouri River and to other territory. Since I left the railroad business and went into the 969 business of handling the affairs of these associations of shippers my principal duty has been the negotiation with railroad officers about tariffs and their application and the relations of the various communities that I serve to the railroads and their competition with other communities. So that I think I may say fairly that I am pretty familiar with the rate adjustments in the territory involved in this complaint, and have been for a number of years.

Q. During these years have you had occasion to examine the published tariff sheets of the respective railway companies doing business in the territory you have described?

A. Yes, frequently.

Q. And furthermore have you yourself heretofore had occasion to testify as a witness relating to railroad freight tariff rates?

A. Yes, sir.

Q. Were you present during the time when the complainants examined as witnesses in this case Mr. J. M. Johnson, Mr. George H. Crosby and Mr. Frank P. Eyman?

A. Yes, sir, I heard the testimony of Mr. Johnson, Mr. Crosby and Mr. Eyman.

Q. I want to ask you whether you recall or remember generally the testimony of Mr. Johnson to the effect that if the order of the Commission was enforced it would retard to a very great extent the commercial interests of the City of St. Louis?

970 A. Yes, sir, I remember that he said substantially that.

Q. And do you recall his further testimony to the point

that if the order of the Commission was enforced it would enable the merchants in the seaboard territory to have a very decided advantage over the merchants in St. Louis?

A. That was the impression that I got from Mr. Johnson's testimony

Q. I will ask you whether you recall the testimony of Mr. George H. Crosby to the point that if the new rate were put into effect it would operate to transfer the business from the intermediate territory to the Atlantic seaboard and would enable the merchants of the Atlantic seaboard to control the business of the country commercially

A. That was my impression.

Q. I would ask you whether you recall the testimony of the witness Frank P. Eyman to the effect that if the rate of the Commission should be enforced it would be injurious and disastrous to the commercial interests of Chicago and St. Louis?

A. I remember distinctly that he said it would be disastrous yes. He emphasized that point.

Mr. McHUGH: Is this for the purpose of showing what the testimony was that these men gave?

Mr. WEBSTER: It is the foundation of what I am going to get out.

Q. Do you recall the substance of the testimony of Mr. Frank P. Eyman further to the effect that if the order of the Commission was enforced it would force the commercial business to the extreme east, referring to the Atlantic seaboard, or to the extreme west referring to the western territory or the Pacific coast?

A. Yes, sir.

Q. Having that in mind let me ask you whether you made a study and an investigation of railroad rates as shown by the published tariff sheets of the railway companies insofar as they affect the combination of the rates from the Atlantic seaboard to Chicago and intermediate cities between the Atlantic seaboard and Chicago?

A. Yes, sir, I did.

Q. You may state how if you recall the testimony of any one of the three witnesses whom I have named, and others in addition thereto, to the point of effect that the in and out rate from Chicago and St. Louis being equal to the through rate from the Atlantic seaboard to the Missouri River cities it tended to the development of Chicago and St. Louis as commercial centers based on the present adjustment of railroad freight rates?

A. Yes, I think that was the impression that would be given by their testimony, that that was the effect of that fact.

Mr. McHUGH: I think we will enter an objection. The complainants object to the witness being interrogated as to his impressions of the testimony already in or to his testifying as to his impressions as to evidence already offered in this cause, for the reason that the testimony is the best evidence, and the impression which it may have made on the mind of the gentlemen or other gentlemen is not the subject of testimony either expert or ordinary.

Mr. WEBSTER:

Q. Had you finished the answer? If not proceed.

A. The testimony as indicated in your question was clearly to the effect that the business of Chicago and St. Louis had been built up upon the conditions named, namely, that the rates to the Missouri River were based upon the sums of the rates from the Atlantic seaboard to the Mississippi River plus the rate from the Mississippi River to the Missouri River; and when the attention of some of these gentlemen was called to the fact that the rates did not exactly break on Chicago on the first class, they took very great pains to emphasize the point that while those rates did not exactly break on Chicago on first class and not on second class, that they did break on the other classes pretty much, and that that was an exceptional proposition and a thing which defeated the general idea.

Q. You may state what the fact is whether the rate from the Atlantic seaboard to Chicago or St. Louis is equal to the sums of the locals or of the in and out rates of intermediate cities, or
973 whether the rate from the Atlantic seaboard to Chicago or St. Louis is in excess of the in and out rates of the intermediate cities between the Atlantic seaboard and Chicago and St. Louis?

A. Generally speaking the rate from New York, taking New York as typical, to either Chicago or St. Louis, is always less than the rate from New York to any intermediate point such as Buffalo, Pittsburg, Cleveland, Detroit, Cincinnati, Columbus—I might go on indefinitely—The sum of the rates in other words, from New York to Buffalo for example, and Buffalo to the Mississippi River, would exceed the direct rate from New York to the Mississippi river. The sum of the rate from New York to Columbus, Ohio, plus the rate from Columbus Ohio to Chicago, would exceed the rate from New York to Chicago.

Q. Have you taken occasion to have prepared a tabulated statement showing the rates from New York in and out to certain of the intermediate points as between Chicago or St. Louis, as well as the combination of the rates from these intermediate points to either the Mississippi or the Missouri River?

A. Yes, sir, I have.

Q. Let me show you a paper and ask you if the paper exhibited to you is such a table prepared under your direction?

A. Yes, sir.

Q. Let me ask you whether or not the figures, rates, and
974 data set down in that table are correct?

A. They are correct yes sir, or substantially correct as far as I could check them.

Q. You may state your sources of information and knowledge as to their accuracy?

A. The figures are taken mainly from the tariffs on file in the office of the Interstate Commerce Commission in Washington, from the original files of those tariffs in that office. A few of them I did not obtain in that manner in Washington, so I obtained a certified copy of the record of the Commission with which to check them;

so that I think I can safely say that they are the tariff rates of the railroads legally in effect upon the date that I got the figures.

Q. State whether the city of Chicago or the city of St. Louis, one or both, have an advantage over Pittsburg in doing business which would come from the Atlantic seaboard under the present existing freight rates and if so state about what that advantage is on the different classes?

Mr. McHUGH: I object to the question as calling for a conclusion of the witness and not for any evidence. If it calls for what the rate is I do not object.

Mr. WEBSTER: I can shorten that and just give one or two points as an illustration, because I am going through this matter in detail, by asking first what is the through rate say from the Atlantic

975 seaboard or New York to the Mississippi River on first class?

A. Eighty-eight cents.

It was agreed and stipulated that the evidence of this witness and of all other witnesses introduced by the defendant intervenors may be taken subject to objection on behalf of the complainants and complainant intervenors that the same is incompetent, irrelevant and immaterial, and not responsive to any of the issues raised by the pleadings in this case and this objection and stipulation also applies to such exhibits as may be offered in evidence.

Q. What is that same rate on business in and out from Pittsburg?

A. On a shipment of first class freight from New York to Pittsburg the rate is 45 cents a hundred. On a shipment of first class freight from Pittsburg to the Mississippi River, which would be St. Louis, or any of the upper river crossings the rate is 56½ cents. If the Pittsburg merchant purchased a shipment of first class goods in New York and shipped them to his warehouse in Pittsburg and subsequently reshipped them or any part of them to St. Louis the total rate that he would have to pay upon such shipment would be one dollar and one cent and a half, as against a rate paid by the St. Louis merchant on the same class of goods shipped direct from New York to St. Louis of 88 cents.

Q. That is how many cents advantage then to the St. Louis man over Pittsburg in such a shipment on first class?

976

A. In the transaction that I have just described the advantage of the St. Louis merchant over the Pittsburg merchant would be represented by the difference between one dollar and one cent and a half and 88 cents, or 13½ cents per hundred pounds.

Q. You may state what advantage the St. Louis man would have over the Pittsburg man under the present freight rate system if goods were shipped second class?

A. The Pittsburg man would pay 39 cents from New York to Pittsburg upon a shipment rated in the second class, and subsequently if he shipped that particular shipment to St. Louis or a shipment in that class, he would pay 49 cents, a total of 88 cents per hundred. The New York man can ship second class freight direct to St. Louis for 76 cents. A difference in his favor in the freight of 12 cents per hundred pounds.

Q. Without going into detail about the other classes down to and including the sixth class I want to ask you whether it be or not true that the same relative advantage would exist in favor of St. Louis over Pittsburg under the present rate system as you have stated exists as to the first and second classes?

A. That would be true of the other four classes relatively in about the same proportion.

977 Q. Now passing Pittsburg then let us take Cleveland next as an illustration, and you may state what advantage St. Louis would have over Cleveland on an in and out rate?

A. If the Cleveland merchant purchased a shipment of first class goods in New York and shipped it to Cleveland, he would pay 53 cents per hundred weight. Subsequently if he reshipped that to St. Louis it would cost him $52\frac{1}{2}$ cents per hundred weight, or a total freight cost from New York to St. Louis of $105\frac{1}{2}$ cents. If the New York man shipped the same first class shipment from New York to St. Louis, or the St. Louis man purchased it in New York and shipped it to St. Louis, he would have to pay 88 cents as against a $105\frac{1}{2}$ cent freight cost to the Cleveland man, or $17\frac{1}{2}$ cents in favor of either the New York man or the St. Louis man.

Q. Now, applying that to the second class and using Cleveland as an illustration, what is the result?

A. The Cleveland man who shipped any article rated at second class from New York to Cleveland would pay 46 cents, and on re-shipping it to the Mississippi River, St. Louis, would pay 45 cents, a total of 91 cents; whereas if the New York man shipped the same shipment second class direct to St. Louis his total freight cost would be 76 cents, a difference in favor of the New York or the St. Louis man of 15 cents per hundred weight on that class.

978 Q. State further about the same relative proportions existing in favor of St. Louis on the other four remaining classes, third, fourth, fifth and sixth?

A. Relative to the size or amount of the rate yes. The differences grow smaller as you go into the third, fourth, fifth and sixth classes, because the amount of the rate is smaller.

Q. Now, use Detroit as an illustration and state to us what advantage St. Louis has over the in and out rate of the merchant doing business in Detroit in seaboard merchandise under present conditions?

A. In all of these cases I have used New York City because that has been used as I understand it all through the testimony in this case as typical. Of course it is understood that all of the rates from New York, Boston, Philadelphia and Baltimore are on fixed differentials and in all trunk line territory all of the points down there are based upon certain fixed differentials above and below New York rates; so that in using New York I use that because it is typical. The Detroit merchant who makes a purchase of first class goods in New York pays 59 cents per hundred to bring them to Detroit. If he subsequently reshipped those goods to St. Louis he would pay 46 cents per hundred, or a total of 105 per hundred from New York to St. Louis, whereas the New York man could

ship those same goods direct to St. Louis, or the St. Louis man could ship them direct from New York, at 88 cents per hundred; a difference in favor of the New York man or the St. Louis man of 17 cents per hundred.

Q. Does that same relative advantage to St. Louis exist under present conditions as to the other classes?

A. Yes.

Q. Take another city or two as typical illustrations. Take next Indianapolis?

A. The Indianapolis merchant purchases a shipment of first class freight in New York and he would pay 70 cents per hundred on the shipment to Indianapolis. If he subsequently reshipped it to St. Louis he would pay 38 cents per hundred weight from Indianapolis to St. Louis, or a total of \$1.08 per hundred. The New York merchant could ship that same shipment direct to St. Louis for 88 cents per hundred, or the St. Louis merchant might buy it in New York and ship it there at that freight, an advantage to the St. Louis and New York merchant of 20 cents per hundred on first class.

Q. Does that same relative advantage exist in favor of St. Louis as to the remaining classes?

A. Yes, varying with the amount of the rate in each class.

Q. Suppose you take next Cincinnati as an illustration?

A. The first class rate from New York to Cincinnati is 65 cents. The first class rate from Cincinnati to the Mississippi River, that is

980 St. Louis, is 41 cents, or a total rate from New York reshipped at Cincinnati to St. Louis of \$1.06, which the Cincinnati man of course would have to pay if he bought first class goods in New York, shipped them to Cincinnati and subsequently reshipped them to St. Louis. The New York man might ship the same goods to the St. Louis merchant direct for 88 cents. A difference in favor of the direct shipment of 18 cents per hundred pounds on first class.

Q. Does that same relative advantage exist in favor of St. Louis as to the other classes?

A. Yes, varying with the amount of the rate as I said before.

Q. In that table that you have prepared would the amount of the advantage as it would be to St. Louis appear or is it set down as to each of the respective six classes?

A. It is put down on the table as to each of the respective six classes. The rates are stated in the table on all six classes from New York and each of these intermediate cities, and the rates on the six classes from each of these intermediate cities to St. Louis, the Mississippi River are set down. It is designated as the Mississippi River. There is also set down the direct class rates from New York to St. Louis and the Mississippi River on the six classes.

Q. In using the Mississippi River in that table then do you mean to say that the same advantage exists as to all the Mississippi
981 River points over the in and out rate of the cities that you have named?

A. That is as to merchants located in those cities. There is a distinction there that I want to bring out.

Q. You may state that then.

A. That would be true exactly of St. Louis, but when the St. Louis rate is applied to the upper Mississippi River crossings it is applied not as a local rate but as a proportional rate. The local rate from New York to the Mississippi River cities north of St. Louis, from Keokuk to Dubuque inclusive at any rate is made on a different basis and if the New York merchants shipped to those cities or those cities purchased goods in New York and shipped them locally they would have to pay what is known as the 122 per cent plus scale which is a higher rate than the 88 cent rate; consequently the St. Louis man has a greater advantage over the intermediate merchant at Indianapolis or Cincinnati than would the merchant located for example at Davenport and Burlington, because the local rates from New York to Davenport and Burlington are not proportional rates which apply as local rates to St. Louis.

Q. You may state—I do not know whether it appears on this table—describe it in your own way and by a general statement as fully as you can, what advantage the city of Chicago enjoys under present conditions over the intermediate cities between Chicago and the

Atlantic seaboard?

982 A. I prepared a table to show that in the case of Chicago. This is the St. Louis table. I think you have my computation there for Chicago.

Q. I haven't it here.

The WITNESS: You simply want a general statement?

Mr. WEBSTER: I simply want a general statement.

A. Exactly the same situation generally speaking exists with reference to Chicago. That is to say a merchant at Cleveland in paying the first class rate from New York to Cleveland and subsequently reshipping to Chicago would pay a greater amount of freight by a considerable number of cents per hundred pounds than the direct rate of 75 cents first class from New York to Chicago. The same thing would be true of Detroit and Indianapolis and Columbus or any other typical shipping point in the intermediate territory.

Q. Then is or is it not true that both Chicago and St. Louis under the present rate conditions are favored in railroad rates over all of the intermediate points between Chicago and St. Louis and the Atlantic seaboard?

A. Undoubtedly.

Q. How long has that favoritism in railroad rate making to Chicago & St. Louis been in existence, so far as your knowledge goes?

983 A. So long as I have had any knowledge of the rates. For a great many years. I think since what is known as the hundred per cent scale was put into effect as the established basis from New York to Chicago, and possibly before that time; but certainly since that time the rate from New York to Cleveland or Detroit or Cincinnati or Columbus, plus the rate from those points to Chicago would be more than the direct rate from New York to Chicago, and has been more.

Mr. Webster offered in evidence the table from which the witness has testified and the same was marked "Defendant Intervenor's Exhibit 1," and here follows:

984

DEPT INTERVENORS' EXHIBIT "I."

Table Showing that Existing Through Rates from New York to Chicago and St. Louis, or Mississippi River Crossings, are a Greater Discrimination Against Intermediate Points and in Favor of Chicago and St. Louis than the New Rates Would be Against Chicago or St. Louis. And that the Rates from New York and St. Louis, or Mississippi River, are Not Made up of the Sums of the Locals but is Less than the Sums of the Locals.

Intermediate points.	Class rates.		Eastern classification.			
	1	2	3	4	5	6
New York to Pittsburg.....	.45	39	30	21	18	15
Pittsburg to Mississippi River....	.56½	49	37½	26	22½	18½
Costs Pittsburg to reach Missis-						
sippi R.....	\$1.01½	88	67½	47	40½	33½
Present through rate from New						
York to Mississippi River. ....	.88	76	59	41	35	29
New York to Cleveland.....	.53	46	36	25	21	18
Cleveland to Mississippi River...	.52½	45	33½	23½	19½	15½
Costs Cleveland to Mississippi						
River.....	\$1.05½	91	69½	48½	40½	33½
Costs New York to Mississippi						
River. ....	.88	76	59	41	35	29
New York to Detroit .....	.59	51	39	27	23	20
Detroit to Mississippi River.....	.46	39½	30½	21	18	14
Costs Detroit to Mississippi River.	\$1.05	90½	69½	48	41	34
Costs New York to Mississippi						
River.....	.88	76	59	41	35	29
985 New York to Grand						
Rapids.....	.72	62	48	34	29	24
Grand Rapids to Mississippi						
River.....	.46	39½	30½	21	18	14
Costs Grand Rapids to Mississippi						
R.....	\$1.18	1.01½	78½	55	47	38
Costs New York to Mississippi R..	.88	76	59	41	35	29
New York to Dayton.....	.63	55	42	29	25	21
Dayton to Mississippi River.....	.43	36½	27½	19	15½	13
Costs Dayton to Mississippi R.....	\$1.06	91½	69½	48	40½	34

Costs New York to Mississippi River.....	.88	76	59	41	35	29
New York to Fort Wayne.....	.68	59	45	32	27	23
Fort Wayne to Mississippi River..	.43	36½	27½	19	15½	12½
Costs Fort Wayne to Mississippi R.....	\$1.11	95½	72½	51	42½	35½
Costs New York to Mississippi R.	.88	76	59	41	35	29
New York to Louisville to Mississippi River.....	.75	65	50	35	30	25
Louisville to Mississippi River...	.41	34½	25½	17½	15	12
Costs Louisville to Mississippi River.....	1.16	99½	75½	52½	45	37
Costs New York to Mississippi River.....	.88	76	59	41	35	29
986 New York to Indianapolis.	.70	60	47	33	28	23
Indianapolis to Mississippi River.....	.38	32½	24	16½	13½	10½
Indianapolis cost to Mississippi River.....	\$1.08	92½	71	49½	41½	33½
Costs New York to Mississippi River.....	.88	76	59	41	35	29
New York to Toledo.....	.59	51	39	27	23	20
Toledo to Mississippi R.....	.46	39½	30½	21½	18	14
Costs Toledo to Mississippi River.	\$1.05	90½	69½	48½	41	34
Costs New York to Mississippi River.....	.88	76	59	41	35	29
New York to Cincinnati.....	.65	57	44	30	26	22
Cincinnati to Mississippi River...	.41	34½	25½	17½	15	12
Costs Cincinnati to Mississippi River.....	\$1.06	92½	47½	41½	41	34
Costs New York to Mississippi River.....	.88	76	59	41	35	29
New York to Buffalo.....	.39	33	28	19	16	13
Buffalo to Mississippi River.....	.56½	49	37½	26½	22½	18½
Costs Buffalo.....	.95½	82	65½	45½	38½	31½
Costs New York to Mississippi River.....	.88	76	59	41	35	29

987 Combination From New York to Mississippi on the Cities Named Below.

Buffalo.....	.95½	82	65½	45½	38½	31½
Pittsburg.....	1.01½	88	67½	47	40½	33½
Cleveland.....	1.05½	91	69½	48½	40½	33½
Cincinnati.....	1.06	91½	69½	47½	41	34
Toledo.....	1.05	90½	69½	48½	41	34
Dayton.....	1.06	91½	69½	48	40½	34
Fort Wayne.....	1.11	95½	72½	51	42½	35½
Indianapolis.....	1.08	92½	71	49½	41½	33½
Louisville.....	1.16	99½	75½	52½	45	37
Detroit.....	1.05	90½	69½	48	41	34
Grand Rapids.....	1.18	1.01½	78½	55	47	38
New York to Mississippi when goods stop at Miss.....	.97	84	66	47	40	33
N. Y. to Miss. R., when go to Mis- souri or west.....	.88	75	59	41	35	29

988 Q. You may state in a general way—I will go more into details shortly—whether the city of Chicago and of St. Louis are likewise favored in shipments from the Pacific coast terminals over the cities and towns westward from Chicago and St. Louis intermediate between there and the Pacific coast terminal territory?

Objection was made in addition to the general objection that the question calls for a conclusion.

A. Unquestionably so.

Q. In a general way you may state whether it be true or not true that on shipments of staple articles from the Pacific coast terminals both Chicago and St. Louis obtain merchandise at precisely the same freight rate that the Missouri River Cities have to pay for the same staple article?

A. On the whole list of commodities from the Pacific Coast applying to St. Louis and Chicago and it is a very large list and contains practically every commodity purchased or manufactured in California, the basis of rates is such that St. Louis and Chicago pay exactly the same rate as Omaha, St. Joe and Kansas City with two or three exceptions. One of the exceptions that I recall at the moment is sugar. Another one is cereal products. There may be one or two more but those are the two important exceptions. With those exceptions practically every article in the entire transcontinental commodity lists pays exactly the same freight rate from California points to Missouri points as to Chicago and St. Louis.

989 Q. As you have given sugar as an exception state what is the difference on sugar. First, what is the rate per hundred pounds on sugar to Omaha and then what is the rate to Chicago, so that we will see what the difference may be?

A. The difference is five cents per hundred pounds. There are two rates on sugar, one with a minimum of 60,000 pounds per car and one with a minimum of 33,000 pounds per car. One of those

rates is somewhat higher than the other. I never like to give definite figures except I have the traffic right in front of me, but the difference is five cents per hundred. As I recall the rate I think it is 55 cents to Omaha and 60 to Chicago, but I prefer to verify that from the tariff before saying it positively.

Q. Without going into detail at this time as to all the articles in which Chicago and St. Louis enjoy an advantage over all the western territory on staple articles from the Pacific coast terminals, let me ask you whether you have prepared a map showing the advantage which Chicago and St. Louis enjoy under present freight rate conditions over the intermediate territory east of said cities and the advantage which they enjoy under present freight rate conditions over all the territory west of said cities towards the Pacific coast terminals?

990 A. Yes, sir, I have prepared such a map.

Q. State whether the tables on the right hand side of that map purport to recapitulate all or a part of the testimony you have just given as to rates from the Atlantic seaboard westward coupled with the in and out rates of intermediate points between either Chicago or St. Louis and the seaboard, showing the advantage which Chicago and St. Louis or either of them enjoy in freight rates from the east?

A. The statement on the right hand side of the map shaws exactly the same figures with reference to St. Louis to which I testified, except that it omits the computation and shows merely the totals of the in and out rates. The same thing is true of the rates in and out of Buffalo, Pittsburg, etc., to Chicago, the St. Louis rates being designated as Table A and the Chicago rates as Table B, and the headings indicating clearly what the figures mean.

Q. You may state whether the same general conditions of advantage in favor of Chicago and St. Louis exist on freight from the eastward over other intermediate cities not named on that map?

Objected to in addition to the principal objections that the question is not specific and calls for conclusions.

991 A. I made an examination of the tariffs covering a great many other points than those put down in the statement, and in every case which I tested by computation the rate into that point and out of that point to either Chicago or St. Louis was greater by a material amount than the direct rate from New York to either Chicago or St. Louis. The points included in the statement are taken as well known and typical points.

Q. I now call your attention to the other part of the map relating to the freight rates on articles from the Pacific coast terminals, and ask you to state your source of information and also as to the accuracy of the names of the staple articles there set down and the freight rates thereon set down and computed. You may now proceed with your answer and answer fully.

A. The tables on the left hand side of the map contain the rates on a number of staple articles from Pacific coast points which are shown in Transcontinental Freight Bureau East Bound Tariff No.

3-F, effective January 1, 1909, and designated in the files of the Interstate Commerce Commission as I. C. C. No. 867. This tariff contains two supplements, Supplement 1 and Supplement 3. Supplement 1 is effective February 1, 1909. Supplement 3 is effective March 15, 1909. The tariff is in effect at the present time with those two supplements so far as I am advised. That tariff contains a list of a very large number of commodities on which rates are named from California terminals designated on page 1, and a number of other points that have used the rates from California terminals. The computations from those rates are based upon the tariff rates contained in western classification No. 45 effective November 1, 1908, containing supplements Nos. 7 and 8, effective respectively February 23rd and March 25th, which contains the classification of the various articles between the Missouri River and Chicago. The rates in cents per hundred pounds used in these computations are taken from Joint Freight Tariff W. T. L. No. 215 containing amendments 46 and 47, effective respectively February 10th and March 1st, and also from freight tariff No. 1-A of the western trunk lines, effective November 21, 1908, with supplement 4 thereto, effective January 1st, 1909. The Interstate Commerce Commission's reference to W. T. L. No. 215 is W. T. L. I. C. C. No. 741, and the reference to No. 1-A is W. T. L. I. C. C. No. A-7. Those are the sources of my information for the computations on the left of the map.

Q. On the left hand of the map I observe are three columns marked. What does the first column represent?

A. The published through rate from Pacific coast terminals to St. Louis or Chicago on the commodities named below under the various headings.

Q. You may state whether that same rate exists if the same articles were shipped from the Pacific coast terminals and stopped at the Missouri River cities, with the exception perhaps of sugar and cereals, mentioned in your previous testimony, providing those be on that list, and I do not know whether they are or not?

A. They are. The rates upon all the articles named in this statement are the same to Omaha, St. Joe and Kansas City as to Chicago and St. Louis, with the exceptions mentioned, namely, cereals and cereal products and sugar.

Q. You may state about what the length of the haul from the Pacific coast terminals to Omaha is?

A. I do not know really. I could say about.

Q. That is all I am asking, about what it is.

Objected to.

Q. I will put it in another way, whether it is further to Chicago and St. Louis from Pacific Coast terminals than it is to Omaha?

A. Yes, sir, by the short line railroad it is 480 miles further from Chicago to San Francisco than from Omaha to San Francisco and 450 miles further from Chicago to San Francisco than from Kansas City to San Francisco.

Q. I will ask you whether the rate on the staple articles mentioned

994 on the map is the same with the two exceptions named for the longer haul to Chicago and St. Louis as it is for the shorter haul to the Missouri River cities?

A. Yes, sir.

Q. State what the figures that are set down in the column on the left hand side of the map represent?

A. They represent the total rate produced by taking the tariff rate in effect from the California terminals to Missouri River, Omaha, St. Joe, Kansas City, and adding to it the tariff rates shown in the tariffs indicated above that would be paid if the same articles were reshipped from Omaha, St. Joe or Kansas City to St. Louis.

Q. Then the difference between the figures in the first column and the figures in the second column represent the advantage which St. Louis has over the Missouri River towns in receiving and reshipping these same articles?

A. With the destination at St. Louis, yes.

Q. What do the figures in the third column represent?

A. The figures in the third column represent the tariff rate from California terminals to the Missouri River plus the tariff rate shown in the tariffs indicated by number above to Chicago on the same articles.

Q. Does the difference between the figures in the first column and the figures set down in the third column represent the advantage which Chicago enjoys over the Missouri River cities in the present existing freight rates on staple articles which come from the
995 Pacific coast and which may be rehandled and reshipped by the Omaha or Missouri River merchant?

A. Yes, sir.

Q. Taking the first staple article at the head of the list if you please, marked lemons by car loads, 100. 100 represents what?

A. One hundred represents the rate in cents per hundred pounds from the California terminals to St. Louis or Chicago.

Q. Is it the same thing if the goods were consigned to the Missouri River cities from the Pacific coast terminals?

A. Yes, sir.

Q. If rehandled at Omaha, what does the 135 represent?

A. It represents the \$1 rate to Omaha plus the 35 cent car load rate on lemons from Omaha to St. Louis.

Q. Is it then true that the Omaha merchant if he wanted to purchase and rehandle lemons would have to pay 35 cents more in order to dispose of them in St. Louis than the St. Louis merchant would pay for the same article?

A. On direct shipments yes that is true.

Q. The third column you have got down 145. By that do you mean that the Omaha merchant would have to pay 45 cents more per hundred pounds than would the Chicago merchant, both selling the same article in Chicago?

A. Yes, sir, that is what it means.

996 Q. And that illustration is true is it of the figures set down in the third column underneath each of the respective commodities named?

A. Yes, sir, that is exactly typical of all the illustrations.

Q. How long has that discrimination existed in favor of Chicago and St. Louis over the Missouri River cities?

A. As long as I have had any knowledge of transcontinental rates. Quite a number of years.

Q. There are are there not a large number of other articles than those which are set down on that map to which the same rule or principle applies?

A. Yes indeed there is a list of commodity rates beginning with page 29 in this printed tariff and going to page 55 of the same tariff, closely printed.

Q. Is that map therefore designed to be typical of the advantages which Chicago and St. Louis enjoy over their eastern competitors and over all their western competitors?

A. Yes, that is a fairly typical illustration of the effect of the present transcontinental rate basis.

Mr. Webster offered in evidence the map referred to and it here follows, marked "Defendant Interveners' Exhibit No. 2."

(Insert Map, marked page 997.)

CHARTS

TOO

LARGE

FOR

FILMS

998 Q. In addition to what appears on the face of that map in favor of Chicago and St. Louis over the territory both east and west of them I want to ask you what is the fact in shipments west from Chicago to the Pacific coast terminals, whether Chicago in that enjoys an advantage over the Missouri river cities under present existing conditions?

Objected to in addition to the principal objections noted that the question calls for a conclusion.

A. The transcontinental rate basis is practically speaking the same from Chicago and St. Louis west bound as from Omaha, St. Joe and Kansas City west bound. There may be some exceptions to that. I have not examined the tariffs narrowly but the general basis is the same.

Q. By that you mean that Omaha and the Missouri River cities pay as much in shipping articles to the Pacific coast terminals as do the cities of Chicago and St. Louis?

A. Generally speaking yes, sir.

Q. While that map is on the table in front of you I wish to call your attention to another question and that is the general statement made by some of the witnesses for the railroad companies that the through rates were generally based on the sums of the locals. I wish you would take that map if you please in front of you and state what the fact is throughout the country generally, whether the through rates or long hauls are based on the sums of the
999 locals or whether the converse of the proposition is true, that the long haul is less than the sums of the locals between any of the intermediate points?

A. Taking first the territory known as the official classification territory, which is by far the most important shipping district in the United States, and originates by far the greatest amount of tonnage in the United States, the entire fabric of rates in that territory, from Boston and New York on the east to the Mississippi River on the west, and bounded on the south by the Ohio River but in many cases overlapping the Ohio River and going down into Kentucky, bounded on the west by the Mississippi River but in some cases going over that river into the state of Iowa, and up to the boundary line of—north of the boundary line of Illinois and Wisconsin up to a certain amount of territory affected by direct Milwaukee rates, the entire fabric of rates is based upon the New York Chicago scale as 100 per cent. In other words all of the rates from New York and Boston to every point in that vast territory are made upon a percentage basis over or under the New York Chicago scale and not upon any combination upon any points whatever. That also is true as to business originating in that territory and going to St. Paul and Minneapolis, and to a large extent affected by the use of that scale to St. Paul and

Minneapolis. There is a direct through rate from New York
1000 to St. Paul and Minneapolis of 115 per hundred weight on first class, which is less than the combination on Chicago or Milwaukee or Peoria.

Q. State about how much less that through rate is?

A. On first class the rate from New York to Chicago is 75 cents

per hundred weight. From Chicago to St. Paul and Minneapolis it is 60 cents per hundred weight local. The sum of those two rates would be \$1.35 per hundred, and the direct through rate on first class from New York to St. Paul and Minneapolis is 115 per hundred or 20 cents per hundred less than the combination on Chicago. As to the business originating in New York and the east and consigned to points west of the Mississippi River on which the 87 cent basis is used as a proportional rate up to the Mississippi River, that business cannot be said to be on the sum of the locals because the local rate from New York to every crossing on the Mississippi River from Keokuk to Dubuque, inclusive, is 97 cents per hundred weight and not 87 or 88 cents. So that all of the rates upon which the Mississippi River basis from New York is used as a proportional are less than the sum of the local rates. And that comprehends a very large territory, including the Missouri here and most of the State of Iowa if not all and some other territory I think in South Dakota, some territory in the state of Missouri. Further than that the rates

1001 from St. Louis and Chicago to a very large territory in Kansas and Nebraska are on a basis materially less than the sums of the local rates on the Missouri river. As a matter of fact generally speaking I think that with the exception of certain specific territory here in the west where rates have been held to the sums of the locals by reason of the fact that that is the method of getting the maximum revenue out of it, rates generally speaking between any two distant points especially where two or three railroads are included in the haul, or competitive conditions enter into it in any way, are less than the sums of the two local rates, so that you might say that the practice of railroad rate making as evolved by the railroads themselves is that a long distance rate as for example from New York to St. Louis or New York to Omaha or any other similar distance is as a rule less than the sum of any two rates contained within it.

Q. Going back a little bit in your illustrations you spoke of the rate from New York to the Mississippi River as if you were treating of that as a local rate, or the rate from New York to Chicago as if that were a local rate. I will ask you whether that rate that you so speak of was not greater than the sums of the locals between New York and Chicago or the sums of the locals between New York and the Mississippi River?

A. The question asks if it is not greater than the sums of

1002 the locals. I say no to that. It is not greater. It is less.

The rate from New York to Chicago is always less than the sums of any two locals in between them, based on Cleveland, Detroit, Columbus or any other point that you choose to take. The same thing is true of St. Louis. The rate from New York to St. Louis is less in amount than the sum of the rate from New York to Indianapolis, Indianapolis to St. Louis or New York to Cincinnati and Cincinnati to St. Louis. Speaking of the rate from New York to St. Louis as the local rate can only mean one thing and that is that in distinction in this case at least to a rate from New York to St. Louis it might be used as a proportional rate on business destined beyond. It was because of that fact that I made the point that the

use of the 88 cent scale from New York to the Mississippi River as a basis for making the rates beyond was not the use of a local rate but of a proportional rate so far as all of the upper Mississippi River crossings is concerned, because if the rates from the Mississippi river were based on the sum of the locals to and from the Mississippi River they would have to be based on the 97 cent scale which is in effect from New York to Burlington, Davenport, Muskatine, Clinton, Dubuque and so on.

Mr. WALTER: Do you mean 97 or 91?

A. I mean 97. The first class rate from New York to Burlington is 97 cents a hundred.

1003 Q. That is more than 122 per cent?

A. 122 per cent plus 5 cents bridge toll. That is why it is called 122 per cent plus. If that rate were applied to the making of the rate from New York to the Missouri River the resultant rate would be \$1.56 instead of the present rate of \$1.48 and therefore the rates from New York to the Missouri River cannot be said properly to be on the sums of the locals.

Mr. WEBSTER: To carry out my point a little further and to emphasize it a little, the rate from New York to Philadelphia might be termed, as between those points, a local rate?

A. Yes, if the business terminated at Philadelphia and did not go beyond.

Q. As between New York and Harrisburg if the business terminated at Harrisburg that might be termed a local rate?

A. That would be termed a local rate from New York to Harrisburg if it were a local rate.

Q. Then the rate from New York to Pittsburg might be termed a local rate?

A. Yes.

Q. And is in fact in railroad parlance termed a local rate is it not?

A. Yes, the term local rate is used to distinguish a rate which does not presuppose any condition other than the mere offering for shipment and the taking of the regular tariff. A shipment for example from New York to Philadelphia might be in any one

1004 of different classes of business. It might be an import shipment which would take a rate from New York and Philadelphia materially less than what is called the local rate to distinguish it from that or any other proportion which is accepted by the railroad on account of other circumstances than are included in the mere mechanical handling of business tendered to it at its depot in New York and taken from it at its depot in Philadelphia.

Q. So that on like principle a rate from New York to St. Louis if railroad people wanted to they could call a local rate could they not just as well call it a through rate from New York to St. Louis?

A. It might be a local rate and it might be a through rate at one and the same time.

Q. Isn't it then just a mere matter of a name which you give to it?

A. Altogether. The names given to these rates however have certain definite meaning among railroad men.

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to Omaha, St. Joseph, and Kansas City, Wherewith Chicago, St. Louis, and New York Have the Same Rate Notwithstanding the Longer Haul, and to that Extent Said Cities Have an Advantage Over the Missouri River Cities. Data Taken from I. C. C. 867 Trans-Continental, East Bound Tariff No. 3-F. Effective Jan. 1, 1909.

Grocery and Commission Goods.

Name of article.	Rate from Pacific coast terminals.		
	To Omaha, St. Joseph or Kansas City.	To Chicago or St. Louis.	To New York.
Lemons, Carloads.....	\$1.00 per cwt.	\$1.00 per cwt.	\$1.00 per cwt.
Oranges, Grape Fruit, Limes, Mandarines, Tangerines, Citrons, C. L.....	1.15 per cwt.	1.15 per cwt.	1.15 per cwt.
Dried Fruits, Raisins, Prunes, Figs in boxes, bbls., casks, or kegs, Carloads, Minimum, 40,000.....	1.10 per cwt.	1.10 per cwt.	1.10 per cwt.
Fish (dry), smoked or salted, in boxes or bundles, carloads.	.85 per cwt.	.85 per cwt.	.85 per cwt.
Fish, salted or pickled, Caviar, Minimum 40,000 lbs., per car.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
1010 Preserved Fruits in bulk, in wood, per car, 40,000 lbs.	.85 per cwt.	.85 per cwt.	.85 per cwt.
Beans and Peas, N. O. S., in packages, Carload 40,000 lbs.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Fresh cabbage, Carload of 24,000 lbs.....	.75 per cwt.	.75 per cwt.	.85 per cwt.
Canned Goods, Fish, Fruit, Meats, Soups, Vegetables, Preserved Fruits, and Catsup, Fruit, Jams, and c., 40,000 lbs.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Same list, <i>supra</i> , in less than car loads.....	1.50 per cwt.	1.50 per cwt.	1.50 per cwt.
Cereals and Cereal products, Carloads.....	.75 per cwt.	.80 per cwt.	.80 per cwt.

Cider, Ginger Ale, Carbonated beverages.....	\$.85 per cwt.	\$.85 per cwt.	
Cucumbers, Green, salted.....	.75 per cwt.	.75 per cwt.	
Apples in boxes or barrels.....	1.00 per cwt.	1.00 per cwt.	
Berry, or Fruit Boxes, or Baskets, Carload, 24,000 lbs.....	1.00 per cwt.	1.00 per cwt.	
1011 Butter, Butterine, Oleomargarine, Eggs, Cheese, Dressed Poultry, C. L. 24,000 lbs.....	2.00 per cwt.	2.00 per cwt.	
Grease, Axle in packages, C. L.....	1.00 per cwt.	1.00 per cwt.	
Same in less than carload.....	1.50 per cwt.	1.50 per cwt.	
Honey (comb) boxed, C. L.....	2.00 per cwt.	2.00 per cwt.	
Honey strained in glass or tin cans, boxed or barrels, C. L.	1.00 per cwt.	1.00 per cwt.	
Liquors, Alcohol, High Wines and Pure Spirits in bar- rels, C. L.....	1.00 per cwt.	1.00 per cwt.	
Same Limited to \$2.00 per gallon, C. L.....	.85 per cwt.	.85 per cwt.	
Liquors, N. O. S., including bitters in barrels, C. L.....	1.30 per cwt.	1.30 per cwt.	
Same in glass, C. L.....	1.40 per cwt.	1.40 per cwt.	
Brandy, California, in wood, C. L.....	.85 per cwt.	.85 per cwt.	
Same in glass, C. L.....	1.00 per cwt.	1.00 per cwt.	
1012 Champagne, C. L.....	1.55 per cwt.	1.55 per cwt.	
Fruit Juices and Fruit Syrup, Lime Juice, C. L....	1.10 per cwt.	1.10 per cwt.	
Wine, California, except Champagne, N. O. S., in barrels- kegs, &c., C. L.....	.75 per cwt.	.75 per cwt.	
Same, in glass, C. L.....	1.00 per cwt.	1.00 per cwt.	
Mince Meat, Fruit Paste, C. L.....	1.00 per cwt.	1.00 per cwt.	
Nuts, edible, C. L. 24,000 lbs.....	1.40 per cwt.	1.40 per cwt.	
Olives, Olive Oil, C. L.....	1.00 per cwt.	1.00 per cwt.	
Same, L. C. L.....	1.50 per cwt.	1.50 per cwt.	
Pickles, Kraut, Catsup, Table Sauce, N. O. S., Pickled Peppers, Pepper Sauce, Vinegar, Horseradish, Capers, C. L.....	1.00 per cwt.	1.00 per cwt.	

	To Omaha, St. Joseph or Kansas City.	To Chicago or St. Louis.	To New York.
Same, L. C. L.....	\$1.50 per cwt.	\$1.50 per cwt.	\$1.50 per cwt.
Potatoes, Onions, C. L.....	.75 per cwt.	.75 per cwt.	*.60 per cwt.
Sugar, C. L., 60,000 Minimum weight.....	.55 per cwt.	.60 per cwt.	*.65 per cwt.
Same, 33,000 Minimum.....	.60 per cwt.	.65 per cwt.	.75 per cwt.
1013 Syrup, C. L.....	.75 per cwt.	.75 per cwt.	1.35 per cwt.
Syrup, L. C. L.....	1.35 per cwt.	1.35 per cwt.	.90 per cwt.
Chocolate, Cocoa, Cocoa Butter, Coconut-butter, C. L.....	.75 per cwt.	.75 per cwt.	1.00 per cwt.
Same, L. C. L.....	1.00 per cwt.	1.00 per cwt.	.85 per cwt.
Cocoa Beans, C. L.....	.85 per cwt.	.85 per cwt.	1.35 per cwt.
Same, L. C. L.....	1.35 per cwt.	1.35 per cwt.	.80 per cwt.
Coffee substitutes, Chicory, C. L.....	.80 per cwt.	.80 per cwt.	1.50 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.50 per cwt.	1.00 per cwt.
Macaroni, Vermicelli, C. L., 24,000 lbs.....	1.00 per cwt.	1.00 per cwt.	2.00 per cwt.
Same, L. C. L.....	2.00 per cwt.	2.00 per cwt.	1.70 per cwt.
Spices, N. O. S., Cloves, Nutmegs, Pepper, Car-way Seeds, Ground Sage.....	1.70 per cwt.	1.70 per cwt.	1.00 per cwt.
Tea, C. L.....	1.00 per cwt.	1.00 per cwt.	1.50 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.50 per cwt.	.80 per cwt.
1014 Mustard, Cake, Flour, Bran, in packages, C. L.....	.80 per cwt.	.80 per cwt.	1.00 per cwt.
Same, L. C. L.....	1.00 per cwt.	1.00 per cwt.	1.20 per cwt.
Baking Powders and Baking Powder Compressed, C. L.....	1.20 per cwt.	1.20 per cwt.	1.70 per cwt.
Same, L. C. L.....	1.70 per cwt.	1.70 per cwt.	.80 per cwt.
Coffee, green, roasted, or ground, C. L.....	.80 per cwt.	.80 per cwt.	1.50 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.50 per cwt.	

* Rail & Water.

1015 Q. Have you taken the pains to prepare another table computing the freight rate which the Omaha or the Missouri River man would be obliged to pay if he received and rehandled the same commodities and reshipped them to St. Louis or to Chicago?

A. Yes.

Q. I hand you a table and ask you if that is such a computation?

A. Yes, sir.

Q. Then the exhibit I now hand you, the first column, represents the rate from the Pacific coast terminals to Chicago or St. Louis?

A. Yes.

Q. And that is the same is it as the rate would be on the same commodities from the Pacific coast terminals to Omaha, St. Joe and Kansas City?

A. Yes, with the exceptions named of cereals and cereal products and sugar.

Q. Take the first article in the second column you have got down \$1.35 per hundred weight. Does that indicate that the Omaha man would have to pay 35 cents more per hundred weight if he purchased and reshipped the same article to St. Louis than the St. Louis man would pay for the same article sent to him direct from the Pacific coast terminals?

A. Yes.

Q. Therefore he would pay 35 cents more per hundred weight?

A. Yes.

Q. And the third column 1.45 as to the first article, lemons, would indicate that the Omaha man would pay \$1.45 per
1016 hundred weight to the Chicago man's \$1 per hundred weight if the Omaha man rehandled and reshipped the same article?

A. Yes.

Q. Is that true as to the figures set down in the three columns as to all of the articles set down in that table?

A. Yes, the figures in the three columns are the result of computing the sum of the rate from the California terminals to the Missouri River, plus the existing tariff rates from the Missouri River to St. Louis and Chicago on the same articles either in carloads or less as is specified, and those articles coming from the same tariffs to which reference was given above, namely the transcontinental and western trunk class and commodity tariffs.

Q. What do you say as to the correctness of the computations set down in that table?

A. They were carefully made and I believe they are substantially correct. Of course there is always some error creeps in in figures of this character, but they were checked over carefully and I took great pains to have them entirely correct.

Q. Then in short does that table represent the advantage which the St. Louis and Chicago merchants enjoy under existing freight rates over the Missouri river merchants dealing in the same articles, where they seek to dispose of the same in the same market, to wit, Chicago or St. Louis?

A. Yes, sir, exactly.

1017 Q. And to the extent of the difference between the figures in the first column and the figures set down in the second and third columns is the advantage which the Chicago and St. Louis man enjoys over the Missouri River jobber if he desired to dispose of his articles in that market, to wit, Chicago or St. Louis?

A. Yes, the freight advantage is exactly the difference.

The statement last referred to by the witness was offered in evidence by Mr. Webster on behalf of the defendant intervenors and was marked "Defendant Intervenors' Exhibit No. 4." It here follows:

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to St. Louis or Chicago and Rates on the Same Articles When Laid Down at Omaha, St. Joseph, or Kansas City and Reshipped to St. Louis or Chicago.

Grocery and Commission Goods.

Name of articles.	Rate from Pacific Coast terminals.		
	Freight cost laid down at St. Louis or Chicago.	Freight cost laid down at St. Louis if rehandled at Missouri Riv.	Freight cost laid down at Chicago if rehandled at Missouri Riv.
Lemons, Carloads.....	\$1.00 per cwt.	\$1.35 per cwt.	\$1.45 per cwt.
Oranges, Grape Fruit, Limes, Manderines, Tangerines, Citron, C. L.....	1.15 per cwt.	1.50 per cwt.	1.60 per cwt.
Dried Fruits, Raisins, Prunes, Figs, in boxes, lbs., casks or kegs, C. L. Minimum, 40,000 lbs.....	1.10 per cwt.	1.37 per cwt.	1.42 per cwt.
Fish (dry) smoked or salted in boxes or bundles—Carloads.....	.85 per cwt.	1.07 per cwt.	1.12 per cwt.
Fish, salted or pickles, Caviar. Minimum, 40,000 — ...	.85 per cwt.	1.07 per cwt.	1.12 per cwt.
Preserved Fruits in bulk, in wood, per car 40,000 lbs.....	.85 per cwt.	1.07 per cwt.	1.12 per cwt.
1019 Beans and Peas N. O. S. in packages. Carload 40,000 lbs.....	.85 per cwt.	1.07 per cwt.	1.12 per cwt.
Fresh Cabbage. Carload of 24,000 lbs. ....	.75 per cwt.	.92 per cwt.	.97 per cwt.
Canned Goods—Fish, Fruit, Meats—Soups, Olives, Vegetables, Preserved Fruits and Catsup, Fruit Jams and c. 40,000 lbs .....	.85 per cwt.	1.07 per cwt.	1.12 per cwt.
Same list <i>supra</i> in less than C. L.....	1.50 per cwt.	per cwt.	per cwt.
Cereals and Cereal products. Carloads.....	.80 per cwt.	.84 per cwt.	.87 per cwt.

Table Showing Articles and Through Rates, Etc.—Continued.

Name of article.	Rates from Pacific Coast Terminals		
	Freight cost laid down at St. Louis or Chicago.	Freight cost laid down at St. Louis if rehandled at Missouri Riv.	Freight cost laid down at Chicago if rehandled at Missouri Riv.
Cider, Ginger Ale, Carbonated beverages.....	\$1.12 per cwt.	\$1.07 per cwt.	\$1.12 per cwt.
Cucumbers—Green, Salted.....	.75 per cwt.	.97 per cwt.	1.02 per cwt.
Apples in boxes or barrels.....	1.00 per cwt.	1.22 per cwt.	1.27 per cwt.
Berry or Fruit Boxes or Baskets, Carload 24,000 lbs.....	1.00 per cwt.	1.19½ cwt.	1.27 per cwt.
K. D.			
1020 Butter, Butterine, Oleo-margarine, Eggs, Cheese, Dressed Poultry, C. L. 24,000 lbs.....	2.00 per cwt.	2.35 per cwt.	2.35 per cwt.
Grease, Axle, in packages, C. L.....	1.00 per cwt.	1.22 per cwt.	1.27 per cwt.
Same, in less than C. L.....	1.50 per cwt.	1.77 per cwt.	1.83 per cwt.
Honey (comb) boxed, C. L.....	2.00 per cwt.	2.27 per cwt.	2.32 per cwt.
Honey, strained, in glass or tin cans boxed, or in barrels, C. L.....	1.00 per cwt.	1.27 per cwt.	1.32 per cwt.
Liquors, Alcohol, High Wines, and Pure Spirits, in barrels, C. L.....	1.00 per cwt.	1.28 per cwt.	1.38 per cwt.
Same, limited to \$2.00 per gallon, C. L.....	.85 per cwt.	1.13 per cwt.	1.23 per cwt.
Liquors, N. O. S., including bitters, in barrels, C. L.....	1.30 per cwt.	1.58 per cwt.	1.68 per cwt.
Brandy, California, in wood, C. L.....	.85 per cwt.	1.13 per cwt.	1.23 per cwt.
Champagne, C. L.....	1.55 per cwt.	1.55 per cwt.	2.35 per cwt.
1021 Fruit Juices and Fruit Syrup, Lime Juice, C. L., Wine, California, except Champagne, N. O. S., in barrels, kegs, &c., C. L.....	1.10 per cwt.	1.32 per cwt.	1.37 per cwt.
Same in glass, C. L.....	.75 per cwt.	1.20 per cwt.	1.40 per cwt.
Mince Meat, Fruit Paste, C. L.....	1.00 per cwt.	1.60 per cwt.	1.80 per cwt.
Nuts, Edible, C. L., 24,000 lbs.....	1.00 per cwt.	1.22 per cwt.	1.27 per cwt.
	1.40 per cwt.	1.67 per cwt.	1.72 per cwt.

Olives, Olive Oil, C. L. Olives may be shipped in C. L., Mo. Riv., east, but olive oil takes 1st class.....	\$1.00 per cwt. 1.50 per cwt. 1.50 per cwt.	\$1.22 per cwt. 2.10 per cwt. 1.85 per cwt.	\$1.27 per cwt. 2.30 per cwt. 1.95 per cwt.
Olive oil, L. C. L.....			
Olives, L. C. L.....			
Pickles, Kraut, Catsup, Table-sauce, N. O. S., Pickled pep- pers, Pepper sauce, Vinegar, Horse radish, Capers, C. L.	1.00 per cwt. 75. per cwt. .60 per cwt. .75 per cwt. 1.35 per cwt.	1.22 per cwt. .97 per cwt. .77 per cwt. .92½ p. cwt. 1.62 per cwt.	1.27 per cwt. 1.02 per cwt. .82 per cwt. .97½ cwt. 1.67 per cwt.
Potatoes, Onions, C. L.....			
1022 Sugar, C. L., 60,000 lbs.....			
Syrup, C. L.....			
Syrup, L. C. L.....			
Chocolate, Choc. Coating, Cocoa, Cocoa butter, cocoanut butter, C. L.....	.75 per cwt. .85 per cwt.	1.20 per cwt. 1.20 per cwt.	1.40 per cwt. 1.30 per cwt.
Cocoa beans, C. L., Same, L. C. L.....	1.35 per cwt. .80 per cwt.	1.80 per cwt. 1.02 per cwt.	2.00 per cwt. 1.07 per cwt.
Coffee substitutes, Chicory, C. L.....	1.50 per cwt.	1.77 per cwt.	1.82 per cwt.
Same, L. C. L.....	1.00 per cwt.	1.22 per cwt.	1.27 per cwt.
Macaroni, Vermicelli, C. L., 24,000 lbs.....	2.00 per cwt.	2.27 per cwt.	2.32 per cwt.
Same, L. C. L.....	.....	1st class.	1st class.
Spices, N. O. S.....	.....	2.30 per cwt.	2.50 per cwt.
Cloves, Nutmegs.....	.....	2nd class.	2nd class.
Pepper, Car-way seeds.....	1.70 per cwt.	2.15 per cwt.	2.35 per cwt.
Ground sage, L. C. L.....	1.00 per cwt.	1.60 per cwt.	1.80 per cwt.
Tea, C. L.....	.80 per cwt.	.99½ p. cwt.	L .07 per cwt.
Mustard, cake, flour, and bran in packages, C. L... 1023 Mustard, cake, flour, and bran in packages, L. C. L.....	1.00 per cwt. 1.20 per cwt. 1.70 per cwt. .80 per cwt. 1.50 per cwt.	1.27 per cwt. 1.47 per cwt. 2.05 per cwt. 1.02 per cwt. 1.77 per cwt.	1.32 per cwt. 1.52 per cwt. 2.15 per cwt. 1.07 per cwt. 1.82 per cwt.
Baking Powders and Baking powder compressed, C. L... Same, L. C. L.....			
Coffee, g een, roasted or ground, C. L.....			
Same, L. C. L.....			

1024 Recess 2:30 P. M.

Two thirty P. M.

The direct examination of the witness McVann was continued as follows by Mr. Webster:

Q. Going back to the staple articles, take the rate from the Pacific coast terminals to the Missouri River cities and Chicago or St. Louis, and I want to ask you if you have prepared another table naming staple articles which take the same rate from the Pacific coast terminals to the Missouri River cities and to Chicago or St. Louis that are handled by druggists and chemical houses?

A. Yes, sir.

Q. Have you such a table before you?

A. Yes.

Q. What do you say as to the correctness of the names of the articles set down in that table and the rates thereafter set down, to Omaha, St. Joseph or Kansas City, and likewise to Chicago and St. Louis etc.?

A. They are the figures taken from the Transcontinental Tariff I. C. C. 867 which is known as East Bound Tariff 3-F to which I referred in regard to the lists of other articles and they are correct. They were checked back very carefully with the tariff and show the rates on these articles handled by druggists or chemical houses, from the Pacific coast termini to Omaha, St. Joseph 1025 and Kansas City, also to Chicago and St. Louis and in some cases to New York. In some cases these rates were not made to New York. In other cases the rates made to New York varied as between the rail haul and the rail and water haul and we left them out so as to avoid confusion.

Q. The capital letters C. L. wherever they appear mean car loads?

A. Yes.

Q. And the capital letters L. C. L. mean less than car loads where they appear in that table?

A. Yes, sir. And the letters N. O. S. wherever they appear mean not otherwise specified; meaning that a great many articles come under that general heading and are not specifically mentioned elsewhere.

Mr. Webster on behalf of the defendant intervenors offered the table last referred to in evidence and it was marked "Defendant. Intervenor's Exhibit No. 5." It here follows:

Table Showing Articles and Rates Thereon From Pacific Coast Terminals to Omaha, St. Joseph and Kansas City, Whereon Chicago, St. Louis and New York Have the Same Rate, Notwithstanding the Longer Haul, and to that Extent Said Cities Have an Advantage Over the Missouri River Cities. Data Taken from I. C. C. 867 Trans-Continental, Eastbound Tariff No. 3-F. Effective Jan., 1909.

Goods Handled by Druggists or Chemical Houses.

Name of Article.	Rate From Pacific Coast Terminals.		
	To Omaha, St. Joseph or Kansas City.	To Chicago or St. Louis.	To New York.
Ammonia, Nitrate of, C. L., 50,000 lbs.....	\$.75 per cwt.	\$.75 per cwt.	\$.75 per cwt.
Bone Ash, C. L., 24,000 lbs.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Borax, Boracic Acid, Borate of Line, 40,000 lbs, C. L.....	.80 per cwt.	.80 per cwt.	.80 per cwt.
Calcium, Citrate, C. L.....	.80 per cwt.	.80 per cwt.	.80 per cwt.
Cascara Sograda, Oregon Grape Root, Ara Root, 20,000 lbs.	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Same, L. C. L.....	1.25 per cwt.	1.25 per cwt.	1.25 per cwt.
1027 Citric Acid, in boxes or barrels, L. C. L.....	1.70 per cwt.	1.70 per cwt.	1.70 per cwt.
Dye Woods, N. O. S., in bags or barrels, C. L., 24,000 lbs.....	1.20 per cwt.	1.20 per cwt.	1.20 per cwt.
Same, L. C. L.....	2.00 per cwt.	2.00 per cwt.	2.00 per cwt.
Dye Woods, Fustic Log Wood, Sapan Wood, C. L., 24,000 lbs.....	1.20 per cwt.	1.20 per cwt.	1.20 per cwt.
Same, L. C. L.....	1.60 per cwt.	1.60 per cwt.	1.60 per cwt.
Cream of Tartar, C. L.....	1.20 per cwt.	1.20 per cwt.	1.20 per cwt.
Same, L. C. L.....	1.70 per cwt.	1.70 per cwt.	1.70 per cwt.
Magnesite, Calcined, C. L., 60,000 lbs.....	.75 per cwt.	.75 per cwt.	.75 per cwt.
Magnesite, Crude, C. L., 60,000 lbs.....	.65 per cwt.	.65 per cwt.	.65 per cwt.

Table Showing Articles and Rates Thereon, etc.—Continued.

	To Omaha, St Joseph or Kansas City.	To Chicago or St. Louis.	To New York.
Medicinal Herbs, Leaves, Roots, Twigs, and Herbs, N. O.			
S ^s , dried, in packages, L. C. L.....	3.00 per cwt.	3.00 per cwt.	3.00 per cwt.
Same, in compressed packages, C. L.....	2.30 per cwt.	2.30 per cwt.	2.30 per cwt.
Sulphur, in packages, C. L., 40,000 lbs.....	.75 per cwt.	.75 per cwt.	
1028 Drugs and Medicines, including Patent and Proprietary, and Medicinal Extracts, N. O. S., in packages, C. L., 24,000 lbs.....	1.50 per cwt.	1.50 per cwt.	1.50 per cwt.
Same, L. C. K.....	2.00 per cwt.	2.00 per cwt.	2.00 per cwt.
Quick Silver, in flasks, C. L., 40,000 lbs.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Sulphate of Zinc, in packages, C. L.....	.80 per cwt.	.80 per cwt.	.80 per cwt.
Same, L. C. L.....	1.70 per cwt.	1.70 per cwt.	1.70 per cwt.
Olives and Olive Oil, in packages, C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.50 per cwt.	1.50 per cwt.
Petroleum Oils, C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Honey, strained, in glass or tin cans, boxed or barrels, C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Liquors, Alcohol, High Wines and Pure Spirits, in barrels, C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Same, limited to \$2.00 per gallon, C. L.....	.85 per cwt.	per cwt.	.85 per cwt.
1029 Liquors, N. O. S., including bitters in barrels, C. L.....	1.30 per cwt.	1.30 per cwt.	1.30 per cwt.
Same in glass, C. L.....	1.40 per cwt.	1.40 per cwt.	1.40 per cwt.
Brandy, California in wood, C. L.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Champagne, C. L.....	1.55 per cwt.	1.55 per cwt.	1.55 per cwt.
Fruit Juices and Fruit Syrup, Lime Juice, C. L.....	1.10 per cwt.	1.10 per cwt.	1.10 per cwt.
Wine, California, except Champagne, N. O. S., in barrels, kegs, &c., C. L.....	.75 per cwt.	.75 per cwt.	.75 per cwt.

Same in glass, C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Chocolate, Chicory, Cocoa, Cocoa-butter, Coconut-butter, C. L.....	.75 per cwt.	.75 per cwt.	.90 per cwt.
Same, L. C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Cocoa Beans, C. L.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Same, L. C. L.....	1.35 per cwt.	1.35 per cwt.	1.35 per cwt.
Spices, N. O. S., Cloves, Nutmegs, Pepper, Caraway seeds, Ground Sage, L. C. L.....	1.70 per cwt.	1.70 per cwt.	1.70 per cwt.
1030 Mustard, cake, flour and bran in packages, C. L....	.80 per cwt.	.80 per cwt.	.80 per cwt.
Same, L. C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Baking Powders and Baking Powder compressed, C. L....	1.20 per cwt.	1.20 per cwt.	1.20 per cwt.
Same, L. C. L.....	1.70 per cwt.	1.70 per cwt.	1.70 per cwt.
Mineral Waters, C. L.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Mineral Waters, L. C. L.....	1.35 per cwt.	1.35 per cwt.	1.35 per cwt.

1031 Q. Did you take the same articles named in the last exhibit, being articles handled by druggists or chemical houses, and make the computation of the freight rate, to show the additional cost there would be if any to the Omaha or Missouri River jobber if he rehandled the same article at the Missouri River and reshipped to either Chicago or St. Louis?

A. Yes. I want to explain there that in this list of articles handled—druggists it was not possible to carry out the computation in all cases because of the difference in the classification of articles in the Transcontinental Traffic commodity list and their classification by the western classification. A number of articles might be grouped together under the commodity rate in the Transcontinental Tariff but in figuring rates on those same articles from Omaha, St. Joseph or Kansas City to St. Louis or Chicago the classification might be so variant or so widely different that it would be impossible to vary the same lists of articles through. There may be some variations on that account. In the other list the articles worked through all right pretty much on the same rates, that is to say that where two or more articles were put together under one rate in the Transcontinental they in the grocery line work through on the western classification, whereas in the drug line that is not always true.

Q. Have you now in front of you a table prepared showing the computation representing the additional cost there would be to the Omaha jobber to rehandle and reship the same articles to Chicago or St. Louis and sell them in that market?

A. Yes, sir.

Q. Taking the first article on the table in front of you, to wit, nitrate of ammonia, I notice that you have got down the rate from the Pacific Coast terminals to Chicago or St. Louis 75 cents?

A. Yes.

Q. That means the same rate if the goods were consigned from the Pacific coast terminals and laid down at Omaha?

A. At Omaha, St. Joe or Kansas City.

Q. Under the next column there appears what purports to be a \$1.02 per hundred pounds. That represents the cost to the Missouri River Jobber if he rehandled the same article and laid it down in St. Louis?

A. In St. Louis, yes, sir.

Q. And the third column, 1.07 per hundred weight represents what the Missouri River jobber would have to pay if he rehandled and laid down the same article at Chicago?

A. Yes.

Q. Then the difference between the 75 cents and 102 cents per hundred pounds, to wit 27 cents, would represent the disadvantage that the Missouri River jobber is at if he wanted to handle the same goods and lay them down in St. Louis?

A. Yes.

Q. And the difference between 75 cents and 107 cents per hundred weight, or 32 cents per hundred weight, would be the additional freight rate which the Omaha man would have

1033

to pay if he wanted to rehandle the same goods and lay them down in Chicago?

A. Yes.

Q. That illustration would apply then to all the articles which are set down in that table, covering four sheets of paper?

A. Yes. The basis of computation is the same in each case. The direct rate to Chicago or St. Louis is put in the first column, the sum of that rate and the rate from Omaha, St. Joe or Kansas City to St. Louis is put in the second column, and the sum of the rate to the Missouri River plus the rate from the Missouri River to Chicago is put in the third column.

Q. This was made under your direction?

A. Yes.

Q. So that you know it to be accurate?

A. Yes, I made the figures and computations and checked them up with the tariffs.

Mr. Webster offered the table last referred to in evidence on behalf of the defendant intervenors and the same was marked "Defendant Intervenor's Exhibit No. 6."

It here follows:

Table Showing Articles and Through Rates Thereon from Pacific Coast Terminals to St. Louis or Chicago and Rates on the Same Articles When Laid Down at Omaha, St. Joseph, or Kansas City, and Reshipped to St. Louis or Chicago.

Goods Handled by Druggists or Chemical Houses.

THE INTERSTATE COMMERCE COMMISSION VS.

Name of article.	Rate from Pacific Coast terminals.		
	Freight cost laid down at St. Louis or Chicago.	Freight cost laid down at St. Louis if rehandled at Missouri Riv.	Freight cost laid down at Chicago if rehandled at Missouri Riv.
Ammonia, Nitrate of C. L., 50,000 lbs.....	\$.75 per cwt.	\$1.02 per cwt.	\$1.07 per cwt.
Bone Ash, C. L., 24,000 lbs.....	1.00 per cwt.	1.19½ p. cwt.	1.27 per cwt.
Borax, 40,000 lbs., C. L.....	.80 per cwt.	1.02 per cwt.	1.07 per cwt.
Boric Acid, 40,000 lbs., C. L.....	.80 per cwt.	1.25 per cwt.	1.45 per cwt.
Calcium Citrate, C. L.....	.80 per cwt.	1.40 per cwt.	1.60 per cwt.
Cascara Sograda, Oregon Grape Root, Ara Root, 20,000 lbs..	1.00 per cwt.	1.60 per cwt.	1.80 per cwt.
Citric Acid in boxes or barrels, L. C. L.....	1.70 per cwt.	2.15 per cwt.	2.35 per cwt.
1035 Dye Woods, N. O. S., in bags or barrels, C. L., 24,000 lbs.....	1.20 per cwt.	1.47 per cwt.	1.52 per cwt.
Dye Woods, Fusic Log Wood, Sapan Wood, C. L., 24,000 lbs..	1.20 per cwt.	1.55 per cwt.	1.65 per cwt.
Same, L. C. L.....	1.60 per cwt.	2.05 per cwt.	2.25 per cwt.
Cream of Tartar, C. L.....	1.20 per cwt.	1.65 per cwt.	1.85 per cwt.
Magnesite, Calcined, C. L., 60,000 lbs.....	.75 per cwt.	.97 per cwt.	1.02 per cwt.
Medicinal Herbs, Leaves, Roots, Twigs, and Herbs, N. L. C. L.	3.00 per cwt.	3.60 per cwt.	3.80 per cwt.
Same, in compressed packages, C. L..	2.30 per cwt.	2.65 per cwt.	2.75 per cwt.
Sulphur in packages, C. L., 40,000 lbs.....	.75 per cwt.	.92 per cwt.	.97 per cwt.
Patent and Proprietary Articles in packages, C. L., 24,000 lbs..	1.50 per cwt.	1.95 per cwt.	2.15 per cwt.
Drugs & Medicines, L. C. L.....	2.00 per cwt.	2.60 per cwt.	2.80 per cwt.

1036 Quick Silver in flasks, C. L. 40,000 lbs.....	.85 per cwt.	1.45 per cwt.	1.65 per cwt.
Sulphate of Zinc in packages, C. L.....	.80 per cwt.	1.15 per cwt.	1.25 per cwt.
Olives, Olive Oil, C. L. Olives may be shipped in C. L. Mo. Riv. East, but olive oil takes 1st class.....	1.00 per cwt.	1.22 per cwt.	1.27 per cwt.
Olive oil, L. C. L.....	1.50 per cwt.	2.10 per cwt.	2.30 per cwt.
Olives, L. C. L.....	1.50 per cwt.	1.85 per cwt.	1.95 per cwt.
Honey strained in glass or tin cans boxed or barrels, L. C. L.....	1.00 per cwt.	1.27 per cwt.	1.32 per cwt.
Liquor, Alcohol, High Wines & Pure Spirits in barrels, C. L.....	1.00 per cwt.	1.28 per cwt.	1.38 per cwt.
Same, limited to \$2 per gallon, C. L.....	.85 per cwt.	1.13 per cwt.	1.23 per cwt.
Liquors, N. O. S., including bitters in barrels, C. L.....	1.30 per cwt.	1.58 per cwt.	1.68 per cwt.
Brandy, California, in wood, C. L.....	.85 per cwt.	1.13 per cwt.	1.23 per cwt.
1037 Champagne, C. L.....	1.55 per cwt.	2.15 per cwt.	2.35 per cwt.
Fruit Juices and Fruit Syrup, Lime Juice, C. L.....	1.10 per cwt.	1.32 per cwt.	1.37 per cwt.
Wine, California, except Champagne, N. O. S., in barrels, kegs, &c., C. L.....	.75 per cwt.	1.20 per cwt.	1.40 per cwt.
Same, in glass, C. L.....	1.00 per cwt.	1.60 per cwt.	1.80 per cwt.
Chocolate, Choc. Coating, Cocoa, Cocoa-butter, Coconut but- ter, C. L.....	.75 per cwt.	1.23 per cwt.	1.40 per cwt.
Cocoa Beans, C. L.....	.85 per cwt.	1.20 per cwt.	1.30 per cwt.
Same, L. C. L.....	1.35 per cwt.	1.80 per cwt.	2.00 per cwt.
		1st Class.	1st Class.
		\$2.30 per cwt.	\$2.50 per cwt.
		2nd Class.	2nd Class.
Spices, N. O. S., Cloves, Nutmegs, Pepper, Car-way seeds, Ground Sage, L. C. L.....	1.70 per cwt.	2.15 per cwt.	2.35 per cwt.
Mustard, cake, flour and bran in packages, C. L.....	.80 per cwt.	.99½ p. cwt.	1.07 per cwt.
Mustard, cake, flour and bran in packages, L. C. L.....	1.00 per cwt.	1.27 per cwt.	1.32 per cwt.
Baking Powders and Baking Powder Compressed, C. L.....	1.20 per cwt.	1.47 per cwt.	1.52 per cwt.
Same, L. C. L.....	1.70 per cwt.	2.05 per cwt.	2.15 per cwt.

1038 The WITNESS: These computations upon which this statement is based, the tariff references are the same as those given on the first table of computations put in this morning.

Mr. ATWOOD: Have you made any computations with reference to St. Joseph and Kansas City upon the same principle that is involved in the Omaha computations?

A. All of these statements are made on the basis of rehandling at the Missouri River, meaning Omaha, St. Joseph and Kansas City in each case. The rates in practically every item of the statement are the same if rehandled at St. Joe, Kansas City or Omaha. The rates from Omaha, St. Joe and Kansas City to Chicago and St. Louis are the same in almost every instance. I recall but one exception to that. That is some commodity rates on oil, petroleum and its products from Kansas City to St. Louis and Chicago, which rates are not made from Omaha. The reason for that is that the Standard Oil Company has a large refinery at Kansas City and no occasion for using such rates from Omaha. In every other case all the rates named apply equally to and from Omaha, St. Joe and Kansas City to Chicago and St. Louis.

Mr. WEBSTER: Have you prepared another table showing the rate from the Pacific coast terminals of articles handled by boot and shoe manufacturers and dealers?

A. Yes.

Q. Have you such a table before you?

A. Yes.

Q. What do you say as to the correctness of that table, 1039 the items therein set down?

A. It was prepared in the same manner as the others, from the Transcontinental East Bound Tariff No. 3-F, and the other tariffs referred to in my answer as to the first table, and was carefully checked with those tariffs, and so far as I know is correct.

Q. So far as the articles are therein put down the rate is the same from the Pacific coast terminals to the Missouri River cities and to Chicago or St. Louis?

A. Yes.

Mr. Webster offered the table last referred to in evidence on behalf of the defendant intervenors and it was marked "Defendant Intervenors' Exhibit No. 7."

It here follows:

1040

DEFENDANT INTERVENORS' EXHIBIT "7."

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to Omaha, St. Joseph, and Kansas City, Whereon Chicago, St. Louis, and New York Have the Same Rate Notwithstanding the Longer Haul, and to that Extent said Cities Have an Advantage Over the Missouri River Cities. Data Taken from I. C. C., 867, Transcontinental East-bound Tariff No. 3-F, Effective Jan. 1, 1909.

Articles Handled by Boot and Show Manufacturers and Dealers.

Name of articles.	Rate from Pacific Coast terminals.		
	To Omaha, St. Joseph, or Kansas City.	To Chicago or St. Louis.	To New York.
Leather in boxes, rolls or bundles, of the following kinds:			
Harness, rough, seal, skirting, sole, splits, tan, sheep, boot			
and show heels, leather cut for soles, shoe counters,			
L. C. L.....	\$1.25 per cwt.	\$1.25 per cwt.	\$1.25 per cwt.
Buff, finished calf, patent leather, & etc., L. C. L.....	1.60 per cwt.	1.60 per cwt.	1.60 per cwt.
Boots and show, N. O. S., boxed, L. C. L.....	2.75 per cwt.	2.75 per cwt.	2.75 per cwt.
Boots & shoes, felt, boxed, L. C. L.....	2.00 per cwt.	2.00 per cwt.	2.00 per cwt.

1041 Q. Have you made another table of articles handled by boot and shoe manufacturers, adding thereto the additional cost which the Missouri River shipper would have to pay by way of freight, if rehandled the same articles at the Missouri river cities and reshipped them to Chicago or St. Louis for disposition in said cities?

A. Yes.

Q. I hand you a table and ask you to inspect it and state if that is a table prepared by you?

A. Yes.

Q. I note in that table in the first column you have down 1.25 per hundred weight on leather of various kinds. Is that the freight rate either to the Missouri River cities or to Chicago and St. Louis if shipped direct to those cities?

A. To all alike, to Missouri River and to Chicago and to St. Louis.

Q. If the same article is rehandled by the Omaha dealer and reshipped to St. Louis the rate to him is what?

A. \$1.70, which is the sum of the rate from the California points to the Missouri River and the rate beyond.

Q. That would give St. Louis an advantage over Omaha of the difference between \$1.25 and \$1.70?

A. Yes.

Q. Or 35 cents per hundred weight?

A. 45 cents.

Q. I notice in the next column that you have \$1.90 per hundred weight if rehandled and shipped to Chicago?

A. Yes, sir.

1042 Q. Which would give Chicago an advantage over Omaha in the freight rate, of 65 cents per hundred?

A. Yes.

Q. That is true in the proportions named through the exhibit?

A. Yes, for all four classes of items named on this exhibit.

Q. Leather, boots and shoes, and so on?

A. Yes.

The table last referred to was offered in evidence by Mr. Webster and was marked "Defendant Intervenors' Exhibit No. 8."

It here follows:

1043

DEFENDANT INTERVENORS' EXHIBIT No. "8."

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to St. Louis or Chicago and Rates on the Same Articles When Laid Down at Omaha, St. Joseph, or Kansas City and Reshipped to St. Louis or Chicago.

Articles Handled by Boot and Shoe Manufacturers and Dealers.

Name of articles.	Rate from Pacific Coast terminals.		
	Freight cost laid down at St. Louis or Chicago.	Freight cost laid down at St. Louis if rehandled at Missouri Riv.	Freight cost laid down at Chicago if rehandled at Missouri Riv.
Leather in boxes, rolls or bundles, of the following kinds:			
Harness, rough seal, Skirting, sole splits, tan sheep, Boot and shoe heels, Leather cut for soles, Shoe counters, L. C. L.....	\$1.25 per cwt.	\$1.70 per cwt.	\$1.90 per cwt.
Buff-Finished calf, Patent leather, & etc., L. C. L.....	1.60 per cwt.	2.20 per cwt.	2.40 per cwt.
Boots and Shoes, N. O. S., Boxed, L. C. L.....	2.75 per cwt.	2.35 per cwt.	3.55 per cwt.
Boots & Shoes, felt, boxed, L. C. L.....	2.00 per cwt.	2.60 per cwt.	2.80 per cwt.

1044 Q. Have you prepared a table showing the freight rate on various articles of dry goods and clothing from Pacific coast terminals to Omaha, St. Joe or Kansas City and to Chicago or St. Louis, etc.?

A. Yes.

Q. Have you that table before you?

A. Yes.

Q. And are the matters set down in that table, to wit: the name of the article and the freight rate, obtained from the same sources as those in the other table about which you have spoken?

A. From east bound transcontinental tariff No. 3, yes.

Q. What do you say as to its correctness?

A. I checked it over carefully with the tariffs and I think it is correct.

Mr. Webster offered the table last referred to in evidence on the part of the defendant intervenors and it was marked "Defendant Intervenor's Exhibit 9."

It here follows:

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to Omaha, St. Joseph, and Kansas City, Whereon Chicago, St. Louis and New York Have the Same Rate Notwithstanding the Longer Haul, and to that Extent said Cities Have an Advantage Over the Missouri River Cities. Data Taken from I. C. C., 867, Transcontinental East-bound Tariff No. 3-F, Effective Jan. 1, 1909.

Dry Goods and Clothing.

Name of article.	Rate from Pacific Coast terminals.		
	To Omaha, St. Joseph, or Kansas City.	To Chicago or St. Louis.	To New York.
Cotton & Woolen cloths, Flannels, Gloves, Cotton & Woolen Hosiery, Woolen goods, Knit goods, Overalls, Duck, Denims & Cotton towels in bales or cases, C. L.....	\$2.00 per cwt. 1.60 per cwt.	\$2.00 per cwt. 1.60 per cwt.	\$2.00 per cwt. 1.60 per cwt.
Blankets and Robes in bales or cases, L. C. L.....	1.75 per cwt.	1.75 per cwt.	1.75 per cwt.
Comfortables and comforts (not including down-feather or wool fleece), L. C. L.....	2.00 per cwt. 3.00 per cwt.	2.00 per cwt. 3.00 per cwt.	2.00 per cwt. 3.00 per cwt.
Spool thread, cotton or linen in cases or in cabinets, boxed, L. C. L.....			
Dry Goods, N. O. S., in bales or in cases, L. C. L.....			

1046 Q. Getting back again to the table containing articles handled by dealers in dry goods and clothing, I will ask you if you have made a computation of the freight rate on the same articles when rehandled at the Missouri River cities and shipped either to St. Louis or Chicago for disposition in said cities?

A. Yes, sir.

Q. Have you that table before you?

A. Yes.

Q. And the difference between the figures set down in the first and second column, to wit, \$2 in the first and \$2.60 in the second, would represent the advantage which St. Louis would have over Omaha, St. Joe or Kansas City, to wit, of 60 cents per hundred pounds?

A. Yes.

Q. And in the third column \$2.80 per hundred weight would represent the advantage which Chicago has over Omaha, St. Joe or Kansas City, to wit, 80 cents per hundred pounds?

A. Yes.

Mr. Webster offered the table last referred to by the witness in evidence on behalf of the defendant intervenors and it was marked "Defendant Intervenor's Exhibit No. 10."

It here follows:

DEPENDANT INTERVENORS' EXHIBIT "10."

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to St. Louis or Chicago and Rates on the Same Articles When Laid Down at Omaha, St. Joseph, or Kansas City and Reshipped to St. Louis or Chicago.

Dry Goods and Clothing.

Name of articles.	Rates from Pacific Coast terminals.		
	Freight cost laid down at St. Louis or Chicago.	Freight cost laid down at St. Louis if rehandled at Missouri Riv.	Freight cost laid down at Chicago if rehandled at Missouri Riv.
Cotton & Woolen Cloths, Flannel, Gloves, Cotton & Woolen Hosiery, Woolen goods, Knit goods, Overalls, Duck, Denims & Cotton towels in bales or cases, L. C. L.....	\$2.00 per cwt. 1.60 per cwt.	\$2.60 per cwt. 2.20 per cwt.	\$2.80 per cwt. 2.40 per cwt.
Blankets in bales or cases, L. C. L.....	1.75 per cwt.	2.35 per cwt.	2.55 per cwt.
Comfortables and comforts (not including down-feather or wool fleece), L. C. L.....	2.00 per cwt. 3.00 per cwt.	2.60 per cwt. 3.60 per cwt.	2.80 per cwt. 3.80 per cwt.
Spool thread, cotton or linen, in cases or in cabinet boxed, L. C. L.....			
Dry Goods, N. O. S., in bales or in cases, L. C. L.....			

1048 Q. Let me ask you whether you have prepared another table applying to articles showing the rate thereon from Pacific coast terminals, wherein the rate is the same to the Missouri River cities and to Chicago or St. Louis, which articles have not been enumerated by you in either of the previous tables and have been grouped in another table under the title Miscellaneous articles?

A. Yes.

Q. I will ask you to state what you know as to the correctness of the matters and things set down in the table?

A. This statement of four pages was taken from the same source, transcontinental east bound tariff No. 3-F, and was checked carefully with the tariff, and contains a correct representation of the rates on the articles named, from the Pacific coast terminals to Omaha, St. Joe and Kansas City and to Chicago and St. Louis and to New York in some cases.

Q. And the rates as to each of said articles being the same notwithstanding the longer haul to Chicago or St. Louis?

A. The rates are the same in practically all cases, I think in all cases on this statement to Chicago and to St. Louis as to Omaha, St. Joseph and Kansas City.

Mr. Webster offered the said table in evidence on behalf of the defendant intervenors and it was marked "Defendant Intervenors' Exhibit No. 11."

It here follows:

Table Showing Articles and Rates Thereon from Pacific Coast Terminals to Omaha, St. Joseph, and Kansas City, Whereon Chicago, St. Louis, and New York Have the Same Rate Notwithstanding the Longer Haul, and to that Extent said Cities Have an Advantage Over the Missouri River Cities. Data Taken From I. C. C., 867, Transcontinental East-bound Tariff No. 3-F, Effective Jan. 1, 1909.

Miscellaneous Articles.		Rate from Pacific Coast terminals.		
Name of article.	To Omaha, St. Joseph, or Kansas City.	To Chicago or St. Louis.		To New York.
		\$3.00 per cwt.	\$3.00 per cwt.	
Automobiles, C. L., Minimum weight 12,000 lbs.....	.80 per cwt.	.80 per cwt.	\$3.00 per cwt.	.80 per cwt.
Alfalfa Meal in Bags, C. L., Minimum weight 40,000 lbs..	.50 per cwt.	.50 per cwt.		
Brick, common or pressed, C. L., Minimum weight 50,000 lbs.....	.50 per cwt.	.50 per cwt.		
Fire Brick, C. L., Minimum weight, 50,000 lbs.....	1.00 per cwt.	1.00 per cwt.		1.00 per cwt.
Flax Fibre in Bales, C. L., Weight 24,000 lbs.....	1.00 per cwt.	1.00 per cwt.		1.00 per cwt.
Fibre, Plastering, C. L., weight 20,000 lbs.....	1.50 per cwt.	1.50 per cwt.		1.50 per cwt.
Same, L. C. L.....				
1050 Hair, Cattle, Compressed in bales, C. L., weight 20,000 lbs.....	.85 per cwt.	.85 per cwt.		.85 per cwt.
Broom handles, C. L., Minimum weight 40,000 lbs.....	.85 per cwt.	.85 per cwt.		.85 per cwt.
Hay, baled and pressed, C. L., weight 20,000 lbs.	1.00 per cwt.	1.00 per cwt.		1.00 per cwt.
Hemp in bales, C. L.....	.75 per cwt.	.75 per cwt.		.75 per cwt.
Hops in bales, C. L., weight 15,000 lbs.....	1.50 per cwt.	1.50 per cwt.		1.50 per cwt.
Same, L. C. L.....	2.00 per cwt.	2.00 per cwt.		2.00 per cwt.
Marble and Onyx, sawed, dressed or hammered, C. L., weight 60,000 lbs.....	1.00 per cwt.	1.00 per cwt.		1.00 per cwt.
Same, L. C. L.....	1.75 per cwt.	1.75 per cwt.		1.75
Same, limited to 40c. cubic foot liability, C. L., weight 60,000 lbs.....	.75 per cwt.	.75 per cwt.		.75 per cwt.

Table Showing Articles and Rates Thereon, Etc.—Continued.

	Rate from Pacific Coast terminals.		
	To Omaha, St. Joseph or Kansas City.	To Chicago or St. Louis.	To New York.
Same, L. C. L.....	\$1.50 per cwt.	\$1.50 per cwt.	\$1.50 per cwt.
Oil in cans, boxed, barrels, Petroleum, Gasoline, Benzine, Napha, Lubricating and etc., C. L.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
1051 Bag and Bagging, Burlap, Gunny, Jut or Cotton compressed in bales, C. L.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Same, L. C. L.....	1.25 per cwt.	1.25 per cwt.	1.25 per cwt.
Cans, tin, including tin boxes, lard cans and lard pails, C. L., 20,000 lbs.....	.85 per cwt.	.85 per cwt.	.85 per cwt.
Crockery, earthen-ware, N. O. S., Queensware, C. L., 24,000 lbs.....	1.00 per cwt.	1.00 per cwt.	1.00 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.50 per cwt.	1.50 per cwt.
Incubators, Weight, 24,000 lbs., C. L.....	1.35 per cwt.	1.35 per cwt.	1.35 per cwt.
Same, L. C. L.....	3.00 per cwt.	3.00 per cwt.	3.00 per cwt.
Japanese and Chinese earthen-ware, L. C. L.....	2.00 per cwt.	2.00 per cwt.	2.00 per cwt.
Lawn-sprinklers, L. C. L.....	1.75 per cwt.	1.75 per cwt.	1.75 per cwt.
Musical Instruments, Organs, C. L., Weight 10,000 lbs.....	2.20 per cwt.	2.20 per cwt.	2.20 per cwt.
Pumps, force, steam, Electric or other power, N. O. S., Combination, brass and iron, C. L., 24,000 lbs.....	1.50 per cwt.	1.50 per cwt.	1.50 per cwt.
Same, L. C. L.....	2.00 per cwt.	2.00 per cwt.	2.00 per cwt.
1052 Rubber pneumatic tires (For vehicles), L. C. L.....	3.00 per cwt.	3.00 per cwt.	3.00 per cwt.
Varnish, N. O. S., L. C. L.....	1.90 per cwt.	1.90 per cwt.	1.90 per cwt.
Varnish in barrels or tin cans, etc, C. L.....	.95 per cwt.	.95 per cwt.	.95 per cwt.
Same, L. C. L.....	1.30 per cwt.	1.30 per cwt.	1.30 per cwt.
Wool in Grease, in bales, machine compressed, L. C. L.....	1.10 per cwt.	1.10 per cwt.	1.10 per cwt.
Wool secured in bales, L. C. L.....	1.40 per cwt.	1.40 per cwt.	1.40 per cwt.

1053 Q. Have you prepared another table of the said miscellaneous articles in which you have computed the additional freight rate which would have to be paid by the jobber or dealer in Omaha, St. Joe or Kansas City if he handled and reshipped the same articles through to St. Louis or Chicago?

A. Yes, sir.

Q. Does the difference between the figures in the first and second column, to wit, between \$3 per hundred weight and \$3.60 per hundred weight, represent the advantage which St. Louis would have over Omaha, St. Joe or Kansas City in dealing in the same article?

A. Yes, sir.

Q. And the \$3.80 over \$3 would represent the advantage which Chicago would have over a jobber in Omaha, St. Joe or Kansas City if he dealt in the same article destined to the same point, to wit, Chicago, for disposition?

A. Yes, laid down at Chicago or St. Louis.

Q. In one case St. Louis has the advantage of 60 cents and in the other Chicago has the advantage of 80 cents over Omaha or St. Joe or Kansas City under the circumstances stated in my previous question?

A. Yes, sir.

Q. And that principle applies to each of the items and articles set down in the table to which you refer?

A. Yes.

Q. Covering three pages?

A. Yes.

1054 Mr. Webster offered the table last referred to in evidence on behalf of the defendant intervenors and the same was marked "Defendant Intervenors' Exhibit 12."

It here follows:

Table Showing Articles and Through Rates Thereon From Pacific Coast Terminals to St. Louis or Chicago and Rates on the Same Articles When Laid Down at Omaha, St. Joseph or Kansas City and Reshipped to St. Louis or Chicago.

Miscellaneous Articles.

Name of articles.	Rate from Pacific Coast Terminals.		
	Freight cost laid down at St. Louis or Chicago.	Freight cost laid down at St. Louis if rehandled at Missouri riv.	Freight cost laid down at Chicago if rehandled at Missouri riv.
Automobiles, C. L., Minimum 12,000 lbs.....	\$3.00 per cwt.	\$3.60 per cwt.	\$3.80 per cwt.
Alfalfa Meal in Bags, C. L., Minimum weight 40,000 lbs...	.80 per cwt.	.88 per cwt.	.91 per cwt.
Flax Fibre in Bales, C. L., weight 24,000 lbs.....	1.00 per cwt.	1.27 per cwt.	1.32 per cwt.
Fibre Plastering, C. L., weight 20,000 lbs.....	1.00 per cwt.	1.22 per cwt.	1.27 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.85 per cwt.	1.95 per cwt.
Hair, Cattle, Compressed in bales, C. L., weight 20,000 lbs.....	.85 per cwt.	1.07 per cwt.	1.12 per cwt.
1056 Broom handles, C. L., minimum 40,000 lbs.....	.85 per cwt.	1.09½ p. cwt.	1.17 per cwt.
Hay, baled and pressed, C. L., weight 20,000 lbs...	1.00 per cwt.	1.12½ p. cwt.	1.17½ cwt.
Hemp in bales, C. L.....	.75 per cwt.	1.02 per cwt.	1.07 per cwt.
Hops in bales, C. L., weight 15,000 lbs.....	1.50 per cwt.	1.95 per cwt.	2.15 per cwt.
Same, L. C. L.....	2.00 per cwt.	2.45 per cwt.	2.65 per cwt.
Bag and Barging Burlap, Gunny, Jute, or Cotton com-pressed in bales, C. L.....	.85 per cwt.	1.00 per cwt.	1.05 per cwt.
Cans, tin, including tin, boxes, cans and lard pails, C. L., 20,000 lbs.....	.85 per cwt.	1.12 per cwt.	1.17 per cwt.

Crockery earthenware, N. O. S., Queensware, C. L., 24,000 lbs.....	1.00 per cwt.	1.22 per cwt. 2nd class.	1.27 per cwt.
Same, L. C. L.....	1.50 per cwt.	1.95 per cwt. 3rd class.	2.15 per cwt.
" " " ".....	1.50 per cwt.	1.85 per cwt.	1.95 per cwt.
1057 Musical instruments, organs, C. L., weight 10,000 lbs. Pumps, force, steam, electric or other power, N. O. S., combination, brass and iron, C. L., 24,000 lbs.....	2.20 per cwt.	2.65 per cwt.	2.85 per cwt.
Varnish in barrels or tin cans, etc., C. L.....	1.50 per cwt.	1.74½ p. cwt.	1.82 per cwt.
Wool in grease, in bales machine compressed, L. C. L.....	.95 per cwt.	1.22 per cwt.	1.27 per cwt.
Wool secured in bales, L. C. L.....	1.10 per cwt.	1.45 per cwt.	1.55 per cwt.
	1.40 per cwt.	2.30 per cwt.	2.60 per cwt.

1058 Q. Were you present at Chicago at the time that Henry Kirk White Jr., testified as a witness in behalf of the complainant railroad companies, relating to a fiber can manufactory at Detroit, representing the Kemiweld Can Company?

A. Yes, sir, I was present and heard his testimony.

Q. After that testimony was taken did you yourself make a personal inquiry and investigation as to the place from which the raw fiber came that was used in the manufacture of the cans referred to by that witness?

A. Yes. The raw material that he testified he used. I went into the question and ascertained the rates from the points of production of that material.

Q. Where did you find the place where the raw material was manufactured or produced to be.

A. At a number of points in northern New York on the Delaware & Hudson railroad.

Q. Did you make an investigation as to the rate on the raw material from the place of its production to the place of manufacture of the competitors named by the said witness, to wit, New York and Brooklyn and Philadelphia?

A. Yes.

Q. And likewise as to the rate on that raw material from the place of production to Detroit where the witness' own manufactory was located?

A. Yes.

1059 Q. You may state what the rate on the raw material, to wit, the fiber, from its place of production to Detroit per hundred weight is?

In addition to the general objection heretofore noted the complainants and complainant intervenors object to the question on the ground that no foundation has been laid for the evidence, the place of origin of the shipment not being named.

A. The witness had testified that his—

Mr. McHUGH: What the witness testified to is in the record.

The WITNESS: I simply use that as introductory to my statement. The witness had testified that his raw material was wood pulp and I made an investigation as to the points of production in northern New York. He said that his pulp came from northern New York. He indicated in a general way the territory from which it originated, in his testimony as I remember it. I went to the files of the Interstate Commerce Commission and dug out the original tariffs naming rates on that commodity from points on the Delaware & Hudson Railroad in Northern New York to certain factory points presumably. There were a number of them. These tariffs were special commodity tariffs on wood pulp. One of them was from Plattsburg, New York, to Philadelphia and Spring Grove Pennsylvania and to
1060 Franklin Pennsylvania. It was known as D. & H. Company's G. F. O. 199 to H. 42 I. C. C. No. 4480, and this particular tariff named a rate on wood pulp in car loads from Plattsburg New York to Philadelphia and Spring Grove Pennsylvania of 17 cents

per hundred, and to Franklin Pennsylvania of 20 cents per hundred. Another tariff of the same company, D. & H. Company, G. F. O. No. 8 H. 43, I. C. C. No. 2302 named a rate on wood pulp from Willisborough New York to Philadelphia of 17 cents. A third tariff, D. & H. Company's G. F. O. 67 to H. 59 I. C. C. 2381 named a rate on wood pulp in car loads from Ausable Forks New York to Jersey City New Jersey of 15 cents per hundred weight. D. & H. Company's F. D. 3526 I. C. C. No. 8727, in connection with D. & H. Company's 7363 named a rate on wet wood pulp to Detroit, of 19 cents per hundred weight. Those were the rates on raw material mentioned by Henry Kirk White in his testimony. The points where the factories were located to which those rates were made may not be the same as those he mentioned, but they are indicative clearly of the rate basis on this raw material to Detroit and to the factories which he indicated were in competition with him.

Q. And that rate to Detroit would be 19 cents?

A. Yes.

Q. And if the factory then in New York or Brooklyn paid 15 or 17, by whichever line it came—

1061 A. It would depend somewhat on the point it originated. It might be 15 cents to Jersey City, or 17 cents.

Q. If the factory was in Philadelphia—He stated one of his competitors was in Philadelphia?

A. Seventeen cents.

Q. In addition to that did you make a computation on the rate of the manufactured can such as was manufactured by the Kemiweld Can Company, under existing railroad tariffs, from New York to Omaha?

A. Yes.

Q. And likewise what that rate would be if the order made by the Interstate Commerce Commission should be put in force?

A. Yes.

Q. Then did you in a table add thereto the rate on the raw material?

A. Yes, sir.

Q. As the result of that computation what would the New York man have to pay on his manufactured product from New York to Omaha on the old and present existing tariff rate plus the rate on his raw material to his factory?

A. I base that computation on the higher rate of 17 cents in order that it might not seem unfair, instead of the lower rate of 15 cents which applied to Jersey City from certain points, and the computation brings this result: the New York or Jersey City man bringing his raw material down from the point of production at 17 cents per hundred, manufacturing it into fiber cans and shipping those
1062 cans to Omaha would pay a fourth class rate from New York to the Mississippi River and a third class rate from the Mississippi River to the Missouri River, a total of 76 cents. His freight cost would be therefore the 17 cent rate on the raw material plus the 76 cent rate on finished product or a total of 93 cents. The order of the Commission reducing the rate from the Mississippi River to the

Missouri River made a reduction of five cents per hundred weight on third class. If the rates named in the order had been put into effect the New York man could ship his finished product to Omaha at 71 cents, which plus his raw material rate of 17 would make his total freight cost 88 cents. The Philadelphia rate being 2 cents less than the New York rate to the Mississippi River and the same beyond the result in his case would be 91 cents on the basis of the old rate and 86 cents on the basis of the new rate. The Detroit man bringing his raw material from the same general points of production at a 19 cent rate would pay from Detroit to Omaha 56 cents per hundred, which is the sum of the fourth class rate from Detroit to the Mississippi River and the third class rate from the Mississippi River to Omaha, or a total freight cost to him of 75 cents. The advantage to the Detroit man under the old basis, using his raw material rate in plus his finished product rate out, would be 18 cents per hundred weight

1063 as against the New York man, and 16 cents per hundred weight as against the Philadelphia man. If the rates ordered by the Commission were in effect the Detroit man would still have an advantage in freight cost over the New York man of 13 cents per hundred and over the Philadelphia man of 11 cents per hundred on his raw material plus the rate on his finished product. I want to say just one word supplementary. There were a great many of these tariffs naming rates from a great many pulp mill points to New York and Philadelphia and other points. I simply took three or four instances which were typical of the general situation. I have no doubt if I had taken the time to go over all of the tariffs that were offered me I could have made a dozen illustrations of the same character, but those made were typical of the situation.

Q. So that in any event the raw material could be procured from the points which you have named sufficient for the purpose?

A. Yes.

Q. In addition to what you have said did you make a computation of the advantage which the Detroit man would have taking the rate on the manufactured product from New York to the Mississippi River, as compared to the rate which the Detroit man would pay from Detroit to the Mississippi River?

A. Yes.

Q. Being the place of the factories of the rival companies?
1063½ A. Yes.

Q. What advantage does the Detroit man have in the freight rate on the manufactured product from the factory, over the New York man, to the Mississippi River, in the various classes?

A. The rates on the six classes from New York to the Mississippi River are 88, 76, 59, 41, 35, and 29 cents per hundred pounds.

That is of course what the New York man must pay to get to St. Louis, or the Mississippi River crossings on any articles which he ships taking those class rates, destined to the Missouri River. The Detroit man pays a rate of 46 cents on first class, 39½ cents on second class, 30½ cents on third class, 21 cents on fourth class, 18 cents on fifth class, and 14 cents on sixth class. This gives him an advantage over the New York man equal to almost one half or

about one half of the total freight rate from New York to the Mississippi River.

Q. Would it be substantially the same ratio of advantage that he would have over his competitor at Philadelphia?

A. Yes. There is a regularly established differential of Philadelphia rates under New York of 6 cents on first and second classes and two cents on the third, fourth, fifth and sixth classes, and his advantage would be diminished over the Philadelphia man in getting to the Mississippi River, by the amount of that differential.

1064 Q. Then as a result of your inquiries and investigations you found what as to the Detroit man as to advantages, expressed in general terms, over his competitors either at New York, Brooklyn or Philadelphia?

A. Taking the rates as they appear his location at Detroit gives him a great advantage in the total rate on his manufactured product from Detroit to the Mississippi River and beyond, because of course he has to pay so much less freight to reach the Mississippi River. Naturally then of course the raw material that goes into his manufacture might add to his freight cost if it were produced in the east, as this wet wood pulp is. It would add however to his total rate only the amount of the freight rate from the point of production. If as in the case of this wood pulp the rate were 17 cents to New York and 18 cents to Detroit from the point of production, the Detroit man would be escaping 50 per cent of the manufactured freight cost at an additional expense of about two cents a hundred weight for getting his raw material in. In other words fourth class rate less the two cents, 20 cents a hundred less two cents, or a net difference of 18 cents in the case of a fiber can man. If however he drew his raw materials, as many Detroit manufacturers do, from the producing territory in the west or north of him, or any part where he did not have to pay as high a rate relatively for his raw materials as New York, upon all such matters he would naturally have a big advantage over the manufacturer located at the seaboard, as to his freight cost.

1065 Q. What you have said would apply would it not to tin or like material, if he used that to make the body or any part of his can?

A. Depending upon where he bought it. If he bought his tin plate at Niles Ohio or some similar point his rate would naturally be very much less to Detroit than it would be from that same point to New York.

Q. Have you prepared a table embodying the result of your figures, applying to the fiber can question?

A. Yes.

Q. Have you that table in front of you?

A. Yes.

Q. And the matters therein set down are correct as the result of the investigation you have just testified to?

A. Yes, and these figures are taken from the tariff the numbers of which I gave in my first answer.

Mr. Webster introduced the said table in evidence on behalf of the defendant intervenors and it was marked "Defendant Intervenors' Exhibit 13". It here follows:

1066

DEFENDANT INTERVENORS' EXHIBIT "13."

Table Showing Rates on Fibre Can Material From Source of Supply of Raw Material to the Factories, Combined with Rates on Manufactured Cans to Missouri River.

Rates on Raw Material to the Factories in Following Cities.

Detroit.	New York.	Philadelphia.
19c. per cwt.	15 (a) 17c. cwt.	17c. cwt.

Rates on Finished Product From said Cities to Omaha.

	Old Rate.	New Rate.
New York to Omaha.....	.76	.71
Plus rate Raw Material.....	.17	.17
	<hr/>	<hr/>
	.93	.88
	<hr/>	<hr/>
	Old Rate.	New Rate.
Philadelphia to Omaha.....	.74	.69
Plus rate Raw Material.....	.17	.17
	<hr/>	<hr/>
	.91	.86
	<hr/>	<hr/>
Detroit to Omaha.....	.56	
Plus rate raw material.....	.19	
	<hr/>	
	.75	

Advantage to Detroit Under the Old and Under New Rates.

Over.	Cts.	per.	cwt.	Old.	New.
New York.....	"	"	"	.18	.13
Philadelphia.....	"	"	"	.16	.11

1067 The advantage of the Detroit over the Atlantic seaboard man on shipments to the Mississippi River appears on the following table:

New York to Mississippi River.....	.88	.76	.59	.41	.35	.29
Detroit to Mississippi River.....	.46	.39½	.30½	.21	.18	.14
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	.42	.36½	.28½	.20	.17	.15

- 1068 The right to examine the witness further on behalf of the defendant intervenors was reserved.

Cross-examination.

By Mr. McHUGH:

Q. You have spoken earnestly and often in your testimony of the fact that the rates between New York and Chicago and St. Louis are tapering rates, they taper down, there is no breaking point between New York and Chicago and St. Louis at which rates break, that is the fact is it?

A. Oh, no, I did not say that.

Q. Then is there between New York and Chicago or between New York and St. Louis a point at which the rates break?

A. No, I do not know of any.

Q. So we get back to what I said at first, in that territory the rates do not break anywhere?

A. What I said was that the rates over the whole of trunk line territory, roughly speaking, and the whole of the territory that I outlined in my answer, roughly, east of the Mississippi River, north of the Ohio and south of a certain line drawn through the State of Wisconsin, were made upon the clear basis of under and over a 100 per cent New York-Chicago rate, and that in the making up of the rates so produced none of them was produced by making the rates upon any breaking point intermediate.

1069 Q. Exactly, so we get to where we started. There is no breaking of rates between Chicago and St. Louis on the west and New York on the east, I mean north of the Ohio River?

A. Not as to the rates from New York to that territory.

Q. From New York to that territory the rates are continuous?

A. They are made upon the basis of 100 per cent New York Chicago 75 cent scale and every point east is a certain amount below that.

Q. And the rates so far as the rates per mile in a general way decrease as the distance increases?

A. I would not say that. I do not know that that is true.

Q. But you say Chicago and St. Louis have an advantage in that situation over every city intermediate between Chicago and St. Louis and New York or the seaboard territory?

A. As to any business which originated in New York and was shipped to the intermediate points and for which the intermediate points might use the rate to Chicago.

Q. In other words we will take dry goods, the dealer in Chicago and in St. Louis has an advantage by reason of the fact that there is no breaking of rates in that territory, over every merchant in that line of goods whose location is intermediate between Chicago & St. Louis and the seaboard territory?

A. Unquestionably, a freight rate advantage.

Q. And he has that advantage because the intermediate merchant at Detroit or Cleveland or Cincinnati cannot ship in from New York and handle the goods and then reship to Chicago and St. Louis as cheaply as the Chicago & St. Louis man can get direct from New York?

A. As far as the freight cost goes that is absolutely true.

Q. And therein lies the advantage?

A. The advantage in the freight cost.

Q. In freight rates, and we are speaking of freight rates?

A. Yes.

Q. We will leave out of our examination this word local as applied to rates because you say there may be some confusion in it when used in different ways. A merchant is at a disadvantage then when he is located at Cleveland, Cincinnati or Detroit as compared with Chicago and St. Louis, in freight rate cost because the Chicago or St. Louis man can get his goods from New York cheaper than the man at the intermediate point can ship from New York, handle the goods, and reship to Chicago or St. Louis?

A. That is true if the freight were the only consideration.

Q. I am speaking only of freight consideration.

A. Speaking exclusively of freight the Chicago man would have the advantage.

Q. That advantage that you have testified to is an advantage you say that Chicago and St. Louis have?

A. Yes.

Q. Are they the only cities that have that advantage by virtue of that situation?

The WITNESS: Chicago and St. Louis?

Mr. McHUGH: Yes, are they the only cities that have that advantage by virtue of that situation?

The WITNESS: Well, now, I do not know that I just follow you.

Q. You have testified that Chicago and St. Louis have an advantage over the points intermediate between them and New York because they can ship in from New York cheaper than the merchant at the intermediate point can ship in, handle and ship them on to Chicago and St. Louis. I ask you, are Chicago and St. Louis the only cities that have that advantage by virtue of that situation?

The WITNESS: I must be very dense but I do not just gather what you mean.

Mr. McHUGH: Take a little time and think about it and see whether the merchant at any city other than Chicago or St. Louis, by virtue of the situation, has the advantage you speak of over the intermediate merchant?

The WITNESS: Would it be an answer in accordance with your idea if I said yes that Peoria had the same, is that what your question alludes to?

Mr. McHUGH: No.

1072 The WITNESS: That would be true of Peoria as against Cleveland.

Q. Is that the only city you can think of?

A. I don't know. I think you could take almost any city which was at the end of a thousand miles of railroad, and take the local rates at a point 500 miles away and the local rate beyond the 500 miles and you might make a greater rate.

Q. The city at the west end would have the advantage and would have the benefit. Is that the only city that would have the benefit?

Mr. WALTER: West end of what?

Mr. McHUGH: Of the line.

The WITNESS: I think I see perhaps the point of divergence between your question and my idea.

Mr. McHUGH: I do not know that there is any divergence.

The WITNESS: There is this divergence, that these tables were made and my evidence was given to the point that the rate from New York to Chicago, taking that as typical, was less in amount than the rate from New York to Cleveland for example, and Cleveland to Chicago, and that by reason of that fact the Chicago merchant enjoyed a freight advantage over the Cleveland merchant. That was as to business originating in New York and destined to Chicago

which might be purchased by the Chicago man or by the Cleveland man and reshipped. When you ask me if any other city enjoys an advantage by reason of that fact, I do not exactly know where you are getting to.

Q. Does not New York have that advantage?

A. Unquestionably. If the New York man desired to ship as against the Cleveland man, but unfortunately for the situation the New York man puts his stuff on the cars and has no interest in the freight, as a general rule.

Q. But the New York man shipping to Chicago or St. Louis would have the same advantage over the merchant at the intermediate city that the Chicago or the St. Louis merchant would have wouldn't he?

A. No, I don't think he would.

Q. As a freight proposition he would?

A. The New York man as a rule does not figure the freight rate. He lays his goods down at the depot and lets it go at that.

Q. The freight inheres in what the man pays when he buys doesn't it?

A. Sometimes.

Q. Does not the merchant as a rule buying goods if he has to pay the rate doesn't he figure on it?

A. That depends upon whether he pays it out of his pocket or whether he ultimately charges it back to somebody else and turns the expense bill over for cash.

Q. Then you do not think that the retail merchant in Chicago buying goods figures, if he buys in New York, on the rate he is to pay?

A. He does if he has to pay it.

Q. You have just said that the merchant in New York puts it in the station and doesn't have anything more to do with it?

A. Yes, the merchant in New York does. The merchant in Chicago is the fellow who is interested.

Q. The merchant at Chicago pays the freight?

A. If he pays the freight he certainly figures on it.

Q. Then the New York man dealing with the Chicago retail man to sell him dry goods would have the advantage that you speak of in selling to the retail man in Chicago over the merchant at Cleveland or Toledo or Cincinnati?

A. He might and might not.

Q. You are sure of it in the case of Chicago and St. Louis?

A. I am sure of it in the case of Chicago and St. Louis because I know that Chicago and St. Louis pay the freight and figure it, and I know that in very many cases the New York jobber and shipper does not care about the freight, and so expresses himself.

Q. If he doesn't pay it the man that buys pays it?

A. Yes.

Q. Do you or do you not think that the relative advantage of rates from the point of shipment enters into the determination by the retail man as to where he shall buy?

1075 A. The man who purchases the goods and has to pay the freight out of his pocket undoubtedly figures upon the freight rate.

Q. So if the retail man in Chicago in figuring on buying from New York or Cleveland or Toledo or Detroit or Cincinnati, if he has to pay the freight, figures and finds that the advantage is in favor of the New York man doesn't he?

A. That would depend entirely on the price that the New York man or the Cleveland man offered him.

Q. The Cleveland man had to absorb the freight if he did not pay it?

A. If the Cleveland man's price plus his freight was different from the New York man's price plus his freight—

Q. We are talking about the freight cost?

A. You have injected the retail merchant into the proposition and the prices which he pays for the goods. You have got to couple the two up.

Q. Whoever pays it the freight cost is just as much in favor of the shipper from New York if he pays it as it is in favor of Chicago and St. Louis if they pay it? Answer yes or no?

A. I do not believe I will. I do not think an answer yes or no would be responsive.

Q. Then say so.

The question was read.

A. If he pays it yes, I did not get that point.

1076 Q. Are Chicago, St. Louis and New York the only cities that have this advantage by virtue of the situation that you have testified to over the cities at intermediate points?

A. I should say without any doubt that Chicago and St. Louis had the advantage. I do not include New York for the reason that I have stated.

Q. Would you include any city west of Chicago and St. Louis?

A. I might include Peoria.

Q. Would you go further west than that?

A. No, not specially. I do not know how it would figure out. Take for example Dubuque or Davenport—

Q. Take for example Omaha. If the Omaha merchant can buy goods with a freight charge from New York cheaper than a man at Cleveland can ship in from New York and then ship to Omaha, has not the Omaha man the advantage over the Cleveland man by virtue of that situation?

A. To the extent of the difference in the rates yes.

Q. So that to the extent of the difference in the rates the advantage inheres in Chicago, St. Louis, Omaha, Kansas City and St. Joseph, doesn't it?

A. No, decidedly not, because the advantage is materially an advantage in the case of Chicago and St. Louis and it doesn't amount to anything in the case of Omaha.

Q. You think the difference in freight charge between a shipment going through Cleveland to Omaha direct and a shipment
1077 going to Cleveland, there stopped and handled, and then started to Omaha, would be less than in a case where goods were shipped from New York to Chicago direct and shipped from New York to Cleveland and from Cleveland to Chicago?

A. It might and might not be. I wouldn't want to answer that question without taking the definite figures and figuring them out.

Q. We will leave that that way, but this is true, that where rates are framed on that principle, tapering—

A. That is on a percentage scale.

Q. Yes, without breaking any rates—the advantage inheres to the shippers at either end of the line as against the shippers at intermediate points? That is necessarily true isn't it?

A. If the man at the intermediate point is in competition that is true so far as that condition goes.

Q. That system would put a burden of disadvantage upon a merchant at the intermediate point who competes with the merchants at either end?

A. If he did compete with them. Provided there were no other compensating advantages.

Q. But that so far as freight rates are concerned is true?

A. I do not say yes to that.

Q. You say if there are no compensating advantages?

A. Yes.

Q. But taking that situation as it is that is true?
1078

A. It must be true necessarily, because two and two make
four.

Q. So that a system by which the rates proceed as they proceed from New York to Chicago and from New York to St. Louis is a system that considered by itself and looking at it simply as that system of rates, would on all competitive business necessarily give an advantage to the shippers at the east end and at the west end of the line?

A. It might, but it might not be an undue advantage.

Q. It would be an advantage wouldn't it?

A. Yes, if I have to pay \$5 for what costs you \$4.95 I am at a disadvantage of five cents on that point.

Q. You are in a general way familiar with the business of this western country?

A. Tolerably so as it relates to freight matters.

Q. And shipments and the character of shipments?

A. Yes, I think so.

Q. Is there in this intermediate territory about which you have

testified, between Chicago and St. Louis and the Atlantic seaboard, a wholesale house in dry goods doing business west of the Missouri River that you know of?

A. I know of one that did business here formerly in very large amounts.

Q. Does it do it now?

A. No, I think not.

1079 Q. So you do not know of any dry goods house in any city between Chicago and St. Louis on the west and the Atlantic seaboard territory on the east that is today doing business west of the Missouri River?

A. If I say no to that it wouldn't mean much because there might be a hundred houses in that territory doing business here and I would not know one of them.

Q. But you do not know of any?

A. I do not know of any at the moment, no.

Q. I wish you would take your statement and give me the rate on first class goods, say dry goods, from New York to St. Louis in and out of Cleveland, stopping and handling at Cleveland?

A. That is the rate from New York to Cleveland plus the rate from Cleveland to St. Louis.

Q. I think you have it in your statement?

A. The total is there only. Do you want the separate rates?

Q. The in and out rates.

The WITNESS: Do you want the total or the component parts of it?

Mr. McHUGH: I do not care for the component parts of it?

A. It is right there.

Q. From your testimony and the map that you have exhibited, Table A, it appears that the freight charge on first class merchandise shipped from New York to Cleveland and there handled and
1080 reshipped from Cleveland to St. Louis is 105½ cents?

A. Yes.

Q. From St. Louis to Omaha it is how much?

A. Sixty cents on first class.

Q. That makes 165½ cents through on that shipment of freight charges?

A. I think that would be right.

Q. If the Omaha man shipped that hundred pounds direct from New York what would the rate be?

A. \$1.48.

Q. So that the advantage that the Omaha man would have over the merchant at Cleveland on that shipment, simply looking at this system of rates, would be 17½ cents a hundred?

A. Yes, and pay for two rehandlings of the goods. It is not enough. It ought to be more.

Q. Do you think that is responsive to my question?

A. Yes, I say the difference is not enough. It ought to be more.

Q. Do you think I asked you for your opinion on that? Did you really think I asked in my question for your opinion on that?

A. I say this, that I was led to make that answer from your use of the word advantage instead of difference. I meant to differentiate

between the use of the word difference and the use of the word advantage.

Q. Very well we will let it go at that. Now, this same difference that you have figured out of $17\frac{1}{2}$ cents in favor of the Omaha shipper as against the Cleveland shipper is exactly the difference that the St. Louis merchant would pay as compared with the Cleveland man isn't it?

A. Yes.

Q. Then if it is an advantage to the St. Louis shipper as you have testified, and it is the same sum and the same shipment why differentiate in the case of Omaha?

A. The circumstances are different.

Q. You have testified with respect to California products and the rates upon them that those rates are the same in a large degree to Omaha and to Chicago?

A. East bound, yes.

Q. And that is a disadvantage to Omaha, did you say?

A. If the Omaha man desired to reship those articles to Chicago it would be a disadvantage to him.

Q. As a matter of fact in the railroad tariffs there are provisions so that an Omaha merchant that wants to divert a car load shipment of this California product can have it sent on to Chicago at practically that rate, can't he?

A. I don't know as to that. If it were true he could not take it out of the car and put it into his house and rehandle.

Q. Can he divert the car?

A. By that you mean if he bought a car load of lemons in California and did not desire to use that amount here he might by giving the railroad instructions have the consignee changed to Chicago and the rate protected. I say yes.

Q. Or if our wholesale merchants in Omaha, in pursuance of their very large and extensive jobbing interests in the City of Chicago, should want to deliver a car load of lemons to one of their customers in the city of Chicago and had an order for it they could divert that car of lemons to their customer at Chicago at practically the rate to Omaha, couldn't they?

A. Yes, but it is unfortunate that the system of rates in effect does not permit them to have any customers in Chicago.

Q. It is very unfortunate from your point of view that Omaha cannot job in the city of Chicago. I recognize that. Isn't it true that the same rates that are charged Omaha and are charged Chicago on these California products are charged from the Pacific coast termini to Denver?

A. Not in all cases. A good many cases.

Q. Practically?

A. There are many exceptions in the case of Denver. It might prove that the bulk of the staple articles were handled on that. I have made no investigation of Denver rates.

Q. As a matter of fact lemons are the same aren't they?

A. I could not answer you off-hand. Possibly they are. Yes, lemons are the same to Denver as to Omaha.

- Q. Oranges are the same to Denver as to Omaha?
1083 A. Yes.
Q. Dried fruits are the same?
A. Yes, in car loads.
Q. Fish are the same to Denver and Omaha, fish, dried, smoked or salted?
A. Yes they are the same to Denver as Omaha.
Q. Fish salted or pickled Caviar?
A. Yes.
Q. Preserved fruits are the same aren't they?
A. Yes, preserved fruit.
Mr. Atwood: What point of origin?
A. Same point of origin.
Mr. McHUGH: Beans and peas?
A. Beans and peas car loads are the same.
Q. That is true of fresh cabbage too isn't it?
A. Yes.
Q. It is true of canned goods too isn't it?
A. Yes.
Q. It is also true in less than car loads, same list?
A. Yes, \$1.50 a hundred.
Q. In cereals and cereal products car loads it is 65 cents to Denver and 75 cents to Omaha and 80 cents to Chicago or St. Louis?
A. Yes, that is right.
Q. Take cider, ginger ale, carbonated beverages, what is that to Denver?
A. 85 cents.
Q. Same as to Omaha?
A. Same to Omaha, St. Louis, Kansas City and Chicago.
1084 Q. Cucumbers?
A. Green salted in packages 75 cents Denver and New York.
Q. Apples in boxes and barrels?
A. One dollar a hundred.
Q. Berry or fruit boxes?
A. One dollar a hundred, same to Denver and Omaha and Chicago and New York.
Q. Butter, butterine, oleomargarine, etc.?
A. Yes, eggs, cheese, dressed poultry in packages, car loads, 24,000 pounds \$2 Colorado, Omaha, New York and Chicago.
Q. Axle grease in packages?
A. Axle grease in packages the same to Colorado to Nebraska and to New York.
Q. In less than car load lots?
A. \$1.50, just the same.
Q. Honey boxed?
A. Honey in combs, boxed, in car loads \$2. Just the same.
Q. Strained?
A. One dollar. Just the same.
Q. Liquors, alcohol, high wines?
A. Alcohols, high wines and pure spirits is more to Denver than to Chicago and Omaha.

Q. What is the rate from its termini to Denver?

A. \$1.15 a hundred.

Q. What is the rate to Omaha?

A. One dollar.

Q. How about the same limited to \$2 per gallon?

A. One dollar to Denver and 85 cents to Omaha, St. Louis and Chicago.

1085 Q. How about liquors?

A. Liquors, not otherwise specified the rate is the same, \$1.30.

Q. Same in glass?

A. Same in glass the rate is the same to Colorado points as to Omaha, Kansas City and Chicago.

Q. Brandy?

A. Brandy, California in wood, 85 cents to all points, including New York.

Q. Same in glass?

A. Same condition. One dollar to all points including New York.

Q. Champagne?

A. Champagne is the same Denver to New York inclusive.

Q. Fruit juices?

A. Fruit juices and fruit syrups \$1.10 in car loads, same rate all the way through.

Q. California wines, except champagne?

A. California wines except champagne 90 cents per hundred to Denver, to the Missouri River and Chicago and to New York. All alike.

Q. Now the same in glass?

A. Same in glass is one dollar in car loads, all alike, Denver to New York inclusive.

Q. Mince meat?

A. That is described as fruit and fruit paste in boxes and barrels. It is One dollar a hundred C. L.

Q. Same to Denver as Omaha?

A. Denver, Omaha, Chicago and New York.

Q. Edible nuts?

A. \$1.40 car loads, Denver, Omaha, Chicago and New York.

1086 Q. Olives, olive oil?

A. Same rate all the way, Denver to New York inclusive.

Q. Less than car loads?

A. \$1.50 all the way.

Q. Pickles, kraut, catsup?

A. Pickles not otherwise specified \$1 Colorado to New York inclusive.

Q. Same L. C. L.?

A. Same \$1.50 all the way through.

Q. Onions, potatoes?

A. Potatoes including seed potatoes and onions 75 cents to Denver, same to Omaha.

Q. Sugar?

A. The rate is 55 cents to Denver when the minimum is 60,000, 55 to Omaha, 60 to Chicago and to New York and to St. Louis, and if the minimum is 33,000 the rate is five cents higher.

Q. To all points?

A. Not all points.

Q. So far as your table goes?

A. Yes.

Q. Take syrup.

A. Syrup is 75 cents to Denver and 75 cents including New York.

Q. Less than car load?

A. \$1.35 to all points including New York.

Q. Chocolate?

A. Chocolate, etc., 75 cents to Denver and to all points including New York in car loads, and one dollar in less than car loads.

Q. Your figures give 90 cents to New York. I am only asking about Denver and Omaha?

A. That is right, 75 cents to Chicago and St. Louis and 90 cents to New York. There was a 75 cent rate to New York by steam and rail. All rail to New York is 90 cents.

1087 Q. I am simply asking about comparisons between Denver and Omaha. Same in less than car loads?

A. One dollar for less than car loads to Denver and Missouri River.

Q. Cocoa beans?

A. In packages 85 cents, in car loads to Denver and Missouri River.

Q. Same L. C. L.?

A. \$1.35, same.

Q. Coffee substitutes?

A. 75 cents to Denver in car loads and 80 cents to Omaha.

Q. Same L. C. L.?

A. \$1.20 to Denver and \$1.50 to Omaha.

Q. Macaroni?

A. A dollar to Denver and a dollar to Omaha in car loads.

Q. Less than car loads?

A. \$2 in less than car loads, to both points.

Q. Spices not otherwise specified?

A. Spices not otherwise specified in less than car loads \$1.70 to all points, all groups.

Q. Tea?

A. Tea and tea dust a dollar to Denver and the Missouri River.

Q. L. C. L.?

A. L. C. L. \$1.50.

Q. Mustard cake?

A. Mustard cake, mustard flour and mustard bran in packages 80 cents car loads Denver and Missouri River.

Q. Same L. C. L.?

A. A dollar in car loads, both.

Q. Baking powders?

A. \$1.25 in car loads, both cities.

1088 Q. Same L. C. L.?

A. \$1.70.

Q. Coffee, green, roasted or ground?

A. 75 cents to Denver and 80 to Omaha.

Q. Same L. C. L.?

A. \$1.20 to Denver and \$1.50 to Omaha.

Q. That completes the list, so that there are about three or four of these items coming from the Pacific Coast termini where the rate to Denver is slightly less than the rate to Omaha and some where the rate to Denver is more?

A. One I think.

Q. But substantially the rates are the same?

A. I think so.

Q. You have testified that as a general rule through rates, especially over two railroads were lower than the sum of the locals in the United States and that had always been so?

A. That is my belief, that that is the general practice based on what knowledge I have of the subject.

Q. I will ask you to state how the rates are and have been made down into the southeast country, Tennessee, Alabama, Georgia, Florida?

The WITNESS: From what points of origin?

Mr. McHUGH: From Chicago and that territory, from north of the Ohio river and originating at the Ohio River?

A. I don't know much about the rates down there.

1089 Q. Don't you know?

A. In a general way the Chicago rates to we will say Atlanta and some of the basing points down there have been a combination on the Ohio River.

Q. But in the southeast in this territory from Ohio River points and St. Louis and Memphis isn't it true that practically every rate breaks at some point or another?

A. No.

Q. And is made up of combinations?

A. No. If you will permit me to qualify that no, as I understand and from what I know of the situation in the southeast it is this, there are certain designated rate points there, not breaking points but rate making points. Take Atlanta for example, the rate from St. Louis to Atlanta might be one dollar a hundred, but the rate from St. Louis to a point fifty miles towards St. Louis from Atlanta might be \$1.25 a hundred, and probably is, because the long haul clause is ignored almost entirely in the south. There is a peculiar condition there that does not obtain anywhere else.

Q. That rate would be made up of the rate from St. Louis to Atlanta and the rate from Atlanta back to the particular point?

A. Not necessarily.

Q. Do you know what the fact is?

A. Yes, sir, I do.

Q. Have you examined the tariffs?

A. Yes, I have and I have talked about them with the men who have made them. It might be that fact and it might be another fact.

1090 Q. It might be made to equalize a combination rate made to some other points?

A. Yes, but here is the fact, and I think this is an absolute statement of it, if the rate from St. Louis to Atlanta was a dollar and the rate back from Atlanta to Dalton was 25 cents that would undoubtedly be the figure that road would exact at Dalton if it could, and it does do it wherever it can.

Q. Unless some other combination made a lower rate to Dalton?

A. Or some other condition such as a wagon haul or a cross country proposition or some other thing.

Q. That is the way that rates are made in that country?

A. Generally speaking in the southeast in the territory east of what is known as Mississippi Valley territory and south of the Ohio River rates are made in a sort of a sui generis fashion, that is to say they are not based on anything. They are the highest possible combination in every case, ignoring the long and short haul law, wherever it may be ignored and wherever competition permits it to be ignored, and that cannot be used as typical of any other section of the United States.

Q. The rates you say into Wisconsin from the seaboard are not made up of combinations of locals?

A. I limited that to certain territory in Wisconsin.

Q. As a matter of fact in by far the larger part of Wisconsin isn't it true that the rates are made up of the combination
1091 of locals by some lake port?

A. If you take the mileage area I would say yes. If you take the actual business and shipment of the state I would say no. Because that part of the state to which the rates are through rates is the more thickly populated and more productive, and that part of the state which makes on the lake ports is the northern and more sparsely populated part.

Q. What part of Wisconsin is made up of a system of rates that are through?

A. It varies with different railroads. Some roads carry the New York Chicago basis up to Milwaukee and some roads allow it to affect their rates north of the Wisconsin state line. Other roads cut it off at the Wisconsin state line. Generally speaking it would include most of those cities, Milwaukee and west and northwest of Chicago and the lines that run up from Chicago west. It is a ragged territory that I cannot very well define without having the tariffs here. The rate does apply to Milwaukee and it applies to all the territory affecting Milwaukee, and some territory that has been allowed to be affected by Milwaukee that would not necessarily be affected by Milwaukee.

Q. Do you know whether territorily the larger part of Wisconsin has rates that are made up of the sums of the locals?

A. Not sums of locals.

1092 Q. Sums of through rates, I do not care about words?

A. I could not say as to that.

Q. Take the state of Nebraska. Isn't it true that the larger part of the state of Nebraska is served by rates that are made up of combinations?

A. I will answer you in the same way as to Wisconsin, as to mileage areas yes, but as to the actual territory and business done prob-

ably one third of the whole state of Nebraska the rates from Chicago and St. Louis are made up of less than the combination of the locals materially.

Q. Do not the rates into Nebraska break more often on Lincoln than on Omaha?

A. I do not think they break on either one in eastern Nebraska. The rates to eastern Nebraska, to make that clear, are based on an arbitrary over the Missouri River, not on a combination on the Missouri River. That affects the rate as far west as Superior Nebraska, 200 miles west of Omaha. And then you could draw a line from Superior northeast which would strike the Union Pacific Railroad about David City or Schuyler and all that territory east of that line on the Burlington and Missouri Pacific and North-Western and Rock Island roads is less than the sum of the locals, is 1093 based on the arbitrary Lincoln rate from Missouri river.

Q. Is that on all classes?

A. Five classes. At the time this case was being heard before the Commission, or before that time, I made an exact investigation of these rates to determine where the five classes came together and as I remember it the Burlington brought them together, that is made the first combination figure at Superior. Then roughly speaking a line drawn up through Exeter and David City and Schuyler the rates were brought together, but east of that point the rates from Chicago and St. Louis to all points were less than the combination on the Missouri River.

Q. In all classes?

A. On the five classes that were involved in that.

Q. It is your idea that the rates through this western country should be made on a basis that would eliminate the basing rates the breaking of rates?

A. No, I have not expressed any such idea.

Q. I am asking you?

A. I simply said that certain rates were so made.

Q. You have not expressed the idea that that ought to be abolished?

A. No, I have not expressed my opinion on that at all.

Q. In your computations of these shipments beyond Omaha of these matters from the Pacific coast, did you use car load 1094 ratings east?

A. Where it was so specified on the statement if there was a car load rating.

Q. If there was no car load rating?

A. I used less than car load. Actual rates in each case so far as I was able to compute it.

Q. In your statement with reference to wood pulp do you know much about the details of the shipment of wood pulp?

A. I know nothing at all about it.

Q. You do not know whether it is shipped so damp that it makes a great deal of difference, the length of the haul of the pulp?

A. Let me hear that again.

Q. If wood pulp is shipped damp so that the shipment involves the carrying of a very large percentage of moisture the length of the

haul of the wood pulp would be a factor of dead loss in the freight rate?

A. It would depend on whether the freight rate was computed on the track scale rate at the point of shipment or point of origin.

Q. You assume that the New York competitor and Philadelphia competitor all had the same point of origin?

A. I assume that because the tariffs were there showing the rates from the points of origin to these points, and Mr. White testified as I understood that they did.

Q. You assume that they bought at the same points that he did?

A. I was answering you about the reason why I took those 1095 points.

Q. You do not know. You testify you do not know?

A. Yes.

Q. If you do not know, it was an assumption. It may have been well grounded.

A. I do not know that the New York manufacturer bought at those particular points, certainly.

The right to further cross examine the witness was reserved.

Redirect examination.

By Mr. WEBSTER:

Q. Harking back to your cross examination with reference to commodities from Pacific coast terminals on which the railroads under their present system of railroad rate making from the west transport articles from the Pacific coast to Denver, approximating a distance of 1500 miles, at the same rate they transport the same article on to Omaha or to Chicago or St. Louis, if that same principle of rate making should be applied from the Atlantic seaboard west would not and should not the railroads carry and deliver dry goods if you please, to Omaha, St. Louis or Kansas City at a price even less than they deliver or at least equal to the price at 1096 which they deliver the same goods at Chicago or St. Louis?

A. If the same principle were applied to the making of the rates, yes.

Q. Do you know any good reason why the railroads should apply the one system of rate making from the Pacific coast east to Denver and Omaha and refuse to recognize the same principle when they start from the Atlantic seaboard and go west to Chicago and the Missouri River?

A. To attempt to answer that question would be to assume a knowledge of all the conditions governing the making of transcontinental rates and other rates, which I have not got, and I am frank to admit I have not got.

Q. Then you perhaps will have to say that you do not know any good reason why they should not give us this advantage?

A. Your question was if the principle was the same. I said yes to that.

Q. If that same principle was applied by the railroads our rate

instead of being \$1.48 on first class would be reduced to 75 cents on first?

A. No, I think the Chicago rate would be raised to \$1.48 if that principle were applied.

Q. I am not asking what that would be?

A. I thought that was your question.

Q. No, applied as it is, because as it is from the Pacific coast here it is a dollar, and therefore a dollar to Chicago. I am not asking you whether if they were going to change they would raise the rates to the west, but just as they are today if they would apply the principle as it exists today from the Pacific coast east we would get the goods at the Missouri River as cheap as they get them in Chicago or St. Louis wouldn't we?

A. Of course.

Q. Has not this cross examination by Mr. McHugh with reference to rates from the Pacific coast east to Denver, Omaha, St. Joe and Kansas City and on to Chicago and St. Louis shown the practical adoption by the railroads from the Pacific coast east of what I might term the postage stamp theory?

A. Yes, the postage stamp theory practically.

Q. If that is a correct system from the Pacific coast east to Chicago and St. Louis why wouldn't it be an equally good system from the Atlantic seaboard west?

A. I cannot answer that question.

Q. I am not asking if this system is right. I am speaking of it simply as an abstract existing fact. Theoretically it may be very faulty, but you know that railroads have it in force and effect and have had a long time, that practice?

A. Yes, I know that.

Q. You know that is what they are complaining about if we ask them to do something kindred to that coming from the Atlantic seaboard west to the Missouri River, to a limited degree only?

A. (No answer.)

Q. In your cross examination you have been asked with reference to the rates from the Atlantic seaboard west and what cities if any enjoy the advantage by reason of the lesser rate if any for the long haul than for the in and out rate at intermediate points. What is the fact as to whether all the business that the railroads haul is Atlantic seaboard business that may be dealt in by any of these intermediate points, including Pittsburg, Cleveland and Detroit or even Chicago and St. Louis?

The WITNESS: What is the fact as to the amount of business which originates at the Atlantic seaboard?

Q. I put it broader, whether all of their business is business coming from the Atlantic seaboard?

The WITNESS: That is the lines between Chicago and the Missouri River for example?

Q. The lines of railroad that go through these towns about which you were cross examined?

The WITNESS: Cleveland and others?

Mr. WEBSTER: Yes, take them all.

The WITNESS: I could not answer that question as to the amount of their business which originates at the seaboard.

Q. I am not asking the proportionate part of their business, I am asking on the theory that the cross examination seems to have been based upon, that all of their business was Atlantic seaboard 1099 business, so that they were speaking of the disadvantages of one locality and the advantages of another?

A. As to that I do know and can answer. I see your point now.

Q. What are the facts?

A. The fact is that the bulk of the business shipped from cities located like Cleveland and Detroit and Indianapolis and Cincinnati and Pittsburg and other points with which I am very familiar originates right at those points, the raw material in most cases coming from different and other directions than from the Atlantic seaboard. Take the main industry at Pittsburg, the greatest tonnage producing section in the United States, and the raw materials originate near by and come down the lakes. Their coal is mined in Pennsylvania, and the Atlantic seaboard does not exist for them practically speaking as a freight proposition; so that their rates to the Mississippi River and beyond are the rates from those points. Take the case of Detroit, that is true of a very large amount of business, and I think it is true without any question that of the total shipments from Detroit and Cleveland and Pittsburg a very limited amount is business that originates in New York and is shipped to those points and reshipped either to Chicago, St. Louis, Omaha or any other points.

Q. So that as to the questions upon which you were cross-examined in so far as affected by the Atlantic seaboard rate those 1100 cities would not be affected at all practically?

A. Those questions if I understood them were all based on an if. If the goods were purchased in New York and shipped to Cleveland and if shipped from Cleveland to Chicago or St. Louis then would not the fact be so and so. Based upon that I answered yes.

Q. Stripping this question of the if and dealing with facts as they exist and not with supposititious cases that do not exist then what do you say about Pittsburg being so affected to any degree?

A. I do not know of any business which Pittsburg ships to Omaha or to Chicago for that matter which is bought and originates at the Atlantic seaboard. I know of no shippers doing business in Pittsburg, Cleveland or any other such points who are shipping business in competition with shippers or manufacturers of the same class in New York City as a jobbing proposition. So that the freight proposition as to the Cleveland man and the Detroit man who testified in this proceeding is their rate from their factory to the consumer and not the rate from New York to their factory and from the factory to the consumer.

Q. Then take a city like Pittsburg, has it not resources of its own and within itself, which make it independent of this seaboard business?

1101 A. Its location in reference to the coal fields and with reference to lake navigation and with reference to its ability to get cheap pig iron and all that sort of thing make it a great manufacturing point itself and not its rate from the seaboard.

Q. Is that not true in principle of Buffalo except based on different conditions and on different facts?

A. I think it is. Take the case of Pittsburg, to go back to that for a moment the rates from New York to Pittsburg were raised the other day six cents a hundred on first and second class and two cents a hundred on third, fourth, fifth and sixth, and it did not make a ripple on the surface that I heard, and I was in Pittsburg at the time the tariffs were raised and talked to a number of shippers there. That shows I think pretty clearly how little the Pittsburg man cares about the rates from the Atlantic seaboard to Pittsburg upon classes.

Q. That is true because his business is not dependent upon matters which come from the seaboard?

A. Of the class rates I think that is true. As to the jobber and manufacturer who ships his goods out this way.

Q. Then when you are considering the question whether these towns like Pittsburg or Buffalo or Detroit are affected one way or the other by that Atlantic Seaboard rate by reason of the through rate being less than the in and out rate, you must, must you not,

1102 take into account the proportionate part of their business if any which may be dependent upon Atlantic seaboard transportation?

A. Undoubtedly.

Q. As that Atlantic seaboard transportation is diminished the effect is likewise diminished in the same ratio, upon those cities?

A. As to their ability to compete with the manufacturer there yes.

Q. You take the case of Mr. Evans, I think it was, who testified for the Sherwin Williams Company of Cleveland as to varnish, his principal competitor was at Newark New Jersey, and the rate from Newark New Jersey takes the New York rate west bound, and it would not be a question of the rate from Newark New Jersey to Cleveland plus the rate from Cleveland to Omaha, but it would be a question of where the Cleveland man gets his raw material and how much it costs him to lay it down in Cleveland, and not the question of the sum of the rate from New York to Cleveland plus the rate from Cleveland to Omaha. If we found that he got his raw material west or south of Cleveland and paid a short rate on it to Cleveland that would affect materially his freight cost as against that of the Newark manufacturer who he said was his competitor.

Q. Under the present system of rate making which has been brought out in this examination by which you have somewhat emphasized the fact that Chicago and St. Louis had an advantage over intermediate points east of them and likewise an advantage
1103 over the points west of them, in the transportation of goods from the Pacific coast terminals into Chicago or St. Louis, let me ask you what the fact is under present existing conditions whether the Missouri River jobber can do business east of the river

at all to any considerable distance in competition with Chicago or St. Louis on the east of them and if not you may state why not?

A. The ability of the Missouri River jobber to do business to the east of the Missouri River, in the state of Iowa, which is our territory east, is very limited. Of course the amount of territory that he can reach in that state depends directly upon the factor of freight. That is to say a dry goods man might reach further east in Iowa than a grocer or a hardware man, because the freight percentage of cost on his goods is lower expressed in cents per yard or in cents per unit, whatever it may be. The grocery man therefore cannot get east but to a very limited distance and the dry goods man can go to a greater extent. Perhaps a hundred miles. The state of Iowa is about 300 miles wide. The Omaha jobber rarely, as far as my knowledge goes, gets over a hundred miles east of the Missouri River as a general proposition. I think it would be less than a hundred miles in the average. In going east of course he gets the competition

1104 of Chicago, Milwaukee, St. Louis, Peoria, Davenport, Dubuque and other points which are coming west to meet him and the freight situation cuts a figure immediately. Take it in the case of the trans-continental business where the Omaha merchant comes in direct competition in the state of Iowa in the distribution of California products with the Chicago or St. Louis merchant, as I believe they do in a great many cases, the Chicago or St. Louis merchant paying the same freight into his warehouse from California as the Omaha merchant pays, can reach out very far towards Omaha in the distribution of his goods. On business originating at the Atlantic seaboard or in the territory west of there on which the Omaha merchant must pay the freight from New York or Pittsburg or Cleveland or Chicago if he buys there, naturally his ability to reach east is practically nothing as against that of the Chicago or St. Louis jobber who has the same rate for instance of 80 cents a hundred first class to a point within fifty miles of Omaha as the Omaha man pays to Omaha.

Q. The result of that is then that the Chicago or St. Louis man, under the present existing rate system, has a practical monopoly of the surrounding territory and of the territory west until you approach a territory within about a radius of a hundred miles of the Missouri river?

A. In a great many lines of goods which it is necessary for our jobbers to purchase in New England for example a Chicago

1105 man can lay them down cheaper in Lincoln.

Q. I am going to deal with that in a minute. I am speaking to the fact that they have practically a monopoly of the territory west of them to within a hundred miles of Omaha?

A. As against the Missouri River jobbers that is true. Pretty close down to a hundred miles from the Missouri.

Q. When they come into competition with the Missouri River jobber west of the Missouri River what is the situation?

A. As to those articles that are purchased east of Chicago in the territory, particularly in the seaboard territory, affected by the rates in this case the Chicago jobber and the St. Louis jobber can lay his goods down in eastern Nebraska cheaper as to freight cost

than the Omaha or St. Joe merchant can, in a great deal of territory. The best that we have as against that is the combination of rates where the rates make on the combination, but in Lincoln for example and in Fremont and Beatrice and in Falls City and in a great many other places in eastern Nebraska Chicago can actually lay down goods at a less combination of rates than we can, if those goods are purchased at the Atlantic seaboard.

Q. Then applying further the principle that the railroads speak of, the in and out rate, Chicago and St. Louis shut the Missouri River jobbers out of all territory practically east of the Missouri River and leave Chicago and St. Louis on an equal plane with our Missouri River jobbers in all territory west of us?

A. Equal or better.

Q. Take it all in all Chicago and St. Louis enjoy at the present time a great advantage, all things considered, over the Missouri River jobbers?

A. It seems to me that they do as a proposition on business from the west and from the east both. I think they enjoy a great advantage.

Recross-examination.

By Mr. McHUGH:

Q. So that as a matter of fact, as you testify now, the persons doing business in the intermediate territory between Chicago and St. Louis on the west and the seaboard on the east are not doing a business in competition with the seaboard territory merchants?

A. Not as far as I have observed.

Q. So that if there ever was any merchant or any great number of merchants in that territory who were doing business in the west competing with the seaboard territory they are not now in business so far as you know?

A. Not as far as I know. Let me qualify that. I said, and I want to repeat it, so far as I know. I have no great knowledge on that point.

Q. But you were very clear in stating to Mr. Webster that the seaboard did not exist for those merchants?

1107 A. Oh, no, you misunderstood my testimony. I did not intend to convey any such idea. I said that as to manufacturers in Pittsburg particularly.

Q. You said when I asked you about following a shipment into Cleveland and out again that that was only an if and that it had no practical value.

A. No, I did not say that.

Q. It was only an if?

A. I said it was all based upon an if. If the Cleveland man bought his goods in New York and if he reships them to St. Louis.

Q. As he does not do it as a matter of fact there isn't very much value to it?

A. I don't know whether he does or not.

Q. You told Mr. Webster as I understood you——

A. Let me differentiate there. When I answered Mr. Webster in

that unqualified way I was speaking about the manufacturers at Pittsburg whom I knew shipped out here.

Q. Well, let that testimony stand for what it is. Every one of your tabulations, and your map in Table A is based on the same if?

A. Yes truly. I tried to make that clear in my direct testimony.

Q. But the cross-examination coupled with the if was simply a cross-examination relating directly to the Table A that you put in?

A. Undoubtedly so.

Adjourned to 10 o'clock tomorrow morning.

1108 On April 6th, 1909, at ten o'clock, A. M. the parties met pursuant to adjournment at the same place.

FRANK J. HOEL, a witness produced on the part of the defendant intervenors was duly sworn and deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. Frank J. Hoel.

Q. State your business?

A. I am in the wholesale grocery business.

Q. Connected with what firm or company?

A. McCord Brady Company.

Q. Located in Omaha?

A. Yes.

Q. Are you familiar with the wholesale grocery house of Franklin MacVeagh & Company of Chicago?

A. I am somewhat.

Q. Do you know Mr. Jones who testified in this case as a representative of MacVeagh & Company?

A. I have met Mr. Jones.

Q. How long have you been engaged in the wholesale grocery business?

A. Thirty-two years.

Q. Are you familiar with the other wholesale grocery houses in the Missouri River cities?

A. Yes, sir.

Q. Are you familiar with the commodities which are handled by wholesale grocery houses having their places of business in the Missouri River cities?

A. I am.

Q. The wholesale grocery business of your company, in a general way, extends over what territory?

A. The western one third of Iowa, Nebraska, Northern Kansas, portions of South Dakota, Wyoming, Eastern Colorado, eastern Idaho, southern Montana.

Q. You may state in a general way, without at this time going into detail, what the fact is as to the advantage or advisability of a wholesale grocery house being near the point of distribution or

where your customers may be supplied quickly with that which they wish to buy and which you have to sell?

A. The question of time in delivering food stuffs to the retail dealers cuts considerable figure in the business. Wholesale grocers are more or less localized by this condition.

Q. You may state what the fact is whether the house of Franklin MacVeagh & Company or other houses of the like sort in the city of Chicago sell groceries to the jobbers in the Missouri River cities, to any extent, if at all?

A. The wholesale grocers in Chicago do not sell their wholesale groceries on the Missouri River at all.

Q. Where in a general way do the commodities come from that are handled by the wholesale grocery houses situated on the
1110 Missouri River, I mean by that question simply to have you answer in general terms and then I will go into detail more by asking as to particular commodities and articles?

A. Our supplies are drawn from almost every section of the United States.

Q. Then in a general way whether any considerable proportion or percentage comes from the Atlantic seaboard or whether the converse is the general rule?

A. Probably 95 per cent of the products we handle originate in other territory than the Atlantic seaboard.

Q. Would the character of the commodities or articles handled by your house be typical of the commodities handled by other grocery houses of the Missouri River cities?

A. Yes, sir.

Q. Taking then first the subject matter of cereals you may state about what percentage the cereals handled represent of the business of the house?

A. For the year 1908 7.6 per cent.

Q. Calling your attention to the wheat products, consisting of wheat flour and breakfast foods, you may state from what region they come?

A. Wheat products named are the natural products of the Missouri River zone and Atlantic coast jobbers have no share in the distribution of the same in the Missouri River zone.

1111 Q. Calling your attention next to corn products consisting of starch, syrup, hominy, breakfast food and so on, where do they come from, that are handled by Missouri River jobbers, or your house?

A. These corn products come from the Missouri River zone, and the price center is within the zone. Atlantic seaboard jobbers have no share in the traffic whatever.

Q. I next call your attention to the products from oats such as oat meal, rolled oats, etc., what say you about those as to where they come from?

A. Oat products come largely from the Missouri River zone and the Atlantic coast jobbers have no share in the distribution in the Missouri River zone.

Q. I call your attention next to the article of dried peas. State where they come from, what states?

A. Largely from Wisconsin. New York jobbers have no share in this traffic whatever.

Q. The next article that I will have you speak of is rice. State what the facts are as to that commodity?

A. Rice is produced largely in Louisiana and Texas. Jobbers on the Missouri river zone as well as in Chicago are on practically an equality as to freight. New York has no share in the distribution of this product in the Missouri River zone.

Q. I call your attention next to beans as an article or
1112 commodity in your business. Speak of that?

A. Missouri River zone buy their beans largely in Michigan and Wisconsin. Lima beans come entirely from California and in some seasons Missouri River jobbers get some white beans from California. Atlantic coast jobbers have no hand in this traffic except in some seasons of great scarcity when a few imported beans are brought from Europe.

Q. I next ask you to state about what percentage of your business is represented by sugar handled?

A. During the year 1908 the percentage of sugar handled by our house was 22.22 per cent of the total volume of the traffic.

Q. What think you as to how that would compare with the relative proportion of sugar handled by other jobbers on the Missouri River?

A. Rather less I think.

Q. State from what sources you receive the sugar that is handled by the Missouri River jobbers?

A. Sugar comes to this market from California, Utah, Colorado, Nebraska, Louisiana and some hard sugars from New York.

Q. About what proportion could you state of the hard sugars that may come from New York?

A. A very small percentage of the total sugars are so-called hard sugars.

Q. Such of the hard sugars as may come from New York do you know what the fact is as to whether they come under the
1113 commodity rates or under the class rates?

A. Sugars in car load lots take commodity rates. Any change in the class rate would not affect the sale of less than car load lots by any New York Jobber to points on the Missouri River. They do not solicit this traffic at all.

Q. I want to call your attention to canned goods as a class and ask you to state about what percentage they represent of the business of your house?

A. In the year 1908 the percentage was 14.93 per cent.

Q. What would you say as to how that compared with the percentage of such goods handled by other like jobbers in the Missouri River cities?

A. Probably about an average per cent.

Q. I want to ask you to speak of a few of the articles of that kind, and first take up canned tomatoes, and state what states they come from that are handled in this territory?

A. The Missouri River jobbers are supplied with tomatoes largely from Missouri, Iowa, Illinois and Indiana. In seasons of crop failures in those districts canned tomatoes have come from Baltimore or Maryland. Missouri Valley jobbers buying direct from the factories. New York shippers have no share in this business on the Missouri River.

Q. The next article is canned corn. State where that commodity comes from that is handled by Missouri River jobbers?

1114 A. Missouri River jobbers buy their canned corn largely from factories in Illinois, Iowa, Nebraska and Missouri. It is a natural product of this zone. New York Jobbers have no share in this traffic.

Q. I call your attention next to the article of canned peas. State what the facts are about that article?

A. Missouri River jobbers buy their canned peas largely from Wisconsin. Some seasons to a limited extent from western New York. There have been cases in the past where there was a crop failure in the west that some of the peas have come from Baltimore. New York wholesale grocers do not compete for any of this business in the Missouri River zone.

Q. Take next canned fruits that are handled by your house and other wholesale houses here?

A. A considerable portion of the canned fruits handled in this section come from the Pacific coast, and naturally Atlantic coast jobbers cannot compete in this business. Other fruits come from various sections of the country, Michigan, Wisconsin, Western New York, Maryland. Missouri River jobbers buy those goods direct from factories and New York jobbers do not compete for any such business in this section.

Q. Canned salmon?

1115 A. The same conditions apply as on California canned fruits. New York jobbers do not participate in any of this business.

Q. Let me ask you now, since you have got over canned articles like that, one special question, whether or not it be true that so far as the Missouri River jobbers are concerned canned peas and canned beans come chiefly from Maryland or New Jersey?

A. I do not believe any Missouri river jobbers have bought canned peas in Maryland for at least two or three years. Our supplies come almost entirely from Wisconsin. It would only be in case of extreme crop failure in the west that any peas would come from New Jersey or Maryland.

Q. What about beans, does the same apply to that article?

A. Canned beans—do you mean baked beans?

Q. All I can say is the statement of Mr. Jones the best quality of canned peas and beans came from New Jersey or eastern Pennsylvania and Maryland?

A. I believe that refers to the string beans. I think that we buy those almost entirely in western New York state, not in Maryland.

Q. Or eastern Pennsylvania, none there?

A. No, sir, I never heard of it.

Q. Take next the animal food products such as canned meats and so on?

A. The district between the Missouri River and Chicago is 1116 a natural producing district of canned meats. The price center might be said to be on the Missouri River. New York jobbers do not compete for this business.

Q. Take dried fruits, about what percentage of your business is made up of dried fruits?

A. For the year 1908 4.4 per cent.

Q. State the localities that that comes from?

A. A very large portion of the dried fruits used in the Missouri River zone come from the Pacific coast in car load lots at the same rate of freight as prevails from the coast to Chicago and the east.

Mr. McHUGH: How about Denver?

A. Denver also. A blanket rate which prohibits New York from competing for this business in the Missouri Valley. Dried apples come largely from western New York state in car load lots, to Missouri River jobbers, and are not distributed in this zone by Atlantic coast jobbers. Apples are distributed by local dealers in western New York state directly to the jobbing trade both in Chicago and on the Missouri River.

Mr. WEBSTER: Take next fish of the different kinds that are handled. What do you say as to that?

A. That would consist of salt salmon which comes from the Pacific coast. Naturally New York jobbers do not solicit this 1117 business. Domestic salt mackerel, herring and cod fish come largely from Gloucester, Massachusetts, jobbers in the west buying direct from Gloucester both in car load and less than car load.

Q. Do the New York or Chicago jobbers have anything to do with handling that article and distributing it to your houses here?

A. New York jobbers have very little share in this business. Possibly a few small shipments of imported mackerel are made from New York.

Q. How about tobaccos what per cent do they represent of your business?

A. Tobaccos for the year 1908, 9.05 per cent.

Q. State the source of supply and so on?

A. Tobaccos are distributed almost exclusively by the American Tobacco Company at a blanket price which extends over all the territory east of the Rocky Mountains. Local jobbers control the tobacco trade in the different sections. Atlantic seaboard jobbers do not compete for this business in the Missouri Valley zone.

Q. Take domestic manufactures that are handled by grocery houses. About what percentage does that represent of your business?

A. Domestic manufactures consist of about 26.29 per cent of our business.

Q. Would that be typical of other grocery jobbing houses on the Missouri River?

A. It would I think for the class included under that head.

1118 Q. State the sources of supply?

A. Domestic manufactures include matches, candles, crackers, lye, bluing, blacking, soap, soap powders, yeast, soda, salt, baking powder, extracts, cigars, etc. Most of those products have Chicago as a price center and either have a blanket price covering the territory between the Missouri River and the Atlantic coast or a freight equality price, or a price which equalizes the price between the different shipping points. Atlantic coast jobbers do not solicit business in domestic products in the Missouri River zone.

Q. Take coffee next, about what percentage of your business is represented by that commodity?

A. For the year 1908 6.35 per cent.

Q. State from what places and what regions the coffee comes that is handled here?

A. Green coffees are imported via New York and via New Orleans. Green coffees take a commodity rate. They are distributed almost entirely to coffee grocers. Chicago does not compete for the first hand coffee business. These green coffees go direct from the importer to the roaster. The business on roasted coffees in the Missouri River zone is competed for by roasters in Chicago, St. Louis, Boston, New York, Cincinnati and houses and roasters on the Mississippi River. Roasted coffee is strictly a freight paid proposition.

Whoever sells in the Missouri River zone pays the freight, so 1119 that any reduction in rate would not affect the roaster in one section as against the roaster in another section. In other words the Boston roast coffee man pays the freight to the Missouri River the same as also does the Chicago or the St. Louis roaster.

Q. And the reduction of class rate would have no effect?

A. Reduction in class rate would have no effect whatever. The price of coffee is high and the variations in price are made by halves of a cent per pound and a small fraction of three or four cents would not affect the price at all.

Q. I will ask you to state again for my information about what percentage of the business of wholesale jobbers on the Missouri River is made up of articles that come from the seaboard territory, as a foundation for some other questions I want to ask you. I do not care about the precise amounts. Just the estimated percentage?

A. I believe the volume of our purchases from the seaboard would be less than five per cent.

Q. In what you include in that five per cent let me ask you what the fact is as to whether or no some of those articles included in that five per cent are articles imported by you directly from say Holland or France as the case may be, taking mackerel for instance as an illustration?

A. Mackerel we do not import. We import Holland herring direct.

1120 Q. Take that as an illustration then. In the importation of Holland Herring how is that import rate made up or what is it as compared with the local railroad rate from New York to this point?

A. The rate from Holland to Omaha on a barrel of mackerel is \$1.88, to Chicago \$1.06 and to New York 60 cents.

Q. In your importations as to that does either the New York dealer or the Chicago dealer have any part? I am speaking of that article when imported by your house or any other jobbing house on the Missouri River?

A. The New York importer of Holland Herring does not solicit business on that article on the Missouri River.

Q. You perhaps did not understand what I want to get at. When your house makes an importation of that article in your own name it is not handled by either any New York or Chicago house?

A. No, sir, we buy direct.

Q. Do you know what the rate is on mackerel by the car load or less when shipped from Liverpool, or I will speak of mackerel by car load coming either to Chicago or Omaha, what is the difference between the two?

A. The winter rate on mackerel from Liverpool to Chicago via St. Johns New Brunswick is 35 cents per hundred pounds. From New York to Chicago the rate is 30 cents per hundred pounds. Omaha jobbers do not make any importations of mackerel in car load lots and consequently cannot take advantage of these 1121 rates.

Q. What benefit has the Chicago jobber over the Missouri river jobber in dealing with that article under that schedule of rates?

A. Imported mackerel we generally have to buy in Chicago on account of this condition.

Q. State whether there is a large list of articles which may be handled by a large house in Chicago by reason of which a large house may have and has had for a long time an advantage by reason of a rule existing on the lines from the Atlantic seaboard to Chicago, Rule 10. State what the facts are as to that?

A. Rule 10 in the official classification covers a very large list of groceries. This rule allows the mixing of an extensive line of food stuffs which in less than car loads take first, second, third or fourth class, allows them to be mixed in car load lots at the fifth class rate.

Q. Have you a memorandum or list of articles which the Chicago merchant by reason of that rule may combine in car load lots and have the advantage of that rate?

A. I have such a list.

Q. State whether or not it is practicable in the business for the Missouri River jobber to take advantage of that rule and get the benefit of those rates which the Chicago man enjoys?

A. Missouri River jobbers have never been able to take advantage of this rule.

1122 Q. State the reason why?

A. For the reason that they have no facilities for re-handling and rebilling such shipments on the Mississippi River or at Chicago.

Q. You may if you can state what the condition is in the rate which would have to be paid by an Omaha House and a Chicago House in dealing with some of the articles which are on that list

by reason of the privilege granted to them by Rule 10 by eastern lines in making that combination of articles?

A. I will take olives as an illustration of this discrimination in favor of Chicago. Olives are first class in less than car loads from New York to Chicago but in the mixed car they take the fifth class rate, 30 cents per hundred. From Chicago to the Missouri River in less than car loads the rate is 45 cents per hundred. That makes a through proposition for the Chicago jobber of 75 cents per hundred pounds. The rate on olives from New York to the Missouri River taking L. C. L. rate all the way through is \$1.23. There is a discrimination in favor of Chicago of 48 cents per hundred pounds.

Q. Can you mention some other article typical of that discrimination in favor of Chicago?

A. Discrimination on olive oil in tin following out the same calculations would be 30 cents per hundred pounds.

Q. Do you mean 30 cents discrimination in favor of 1123 Chicago?

A. Yes, sir, in favor of the Chicago jobber shipping into Chicago in the mixed car load under Rule 10 and reshipping to the Missouri River zone.

Q. Have you a rate on some other article that you may give?

A. This rule 10 gives the Chicago wholesale grocers the benefit on a very complete line of canned goods, bottled goods such as described in the list which I have in my hand.

Q. Would the same relative proportion of discrimination in favor of Chicago apply generally to the articles that are in that exhibit which you have in your hand?

A. Some of the articles which take the fifth class in this list, which are listed in the fifth class column, take first class L. C. L., some second class and some third class, and some come under Rule 26 in less than car loads; but they all bulk together at the fifth class rate under Rule 10 in car loads, 30 cents per hundred pounds.

Q. By that you mean when shipped to Chicago but that does not apply when shipped westward to the Missouri jobber?

A. It does not.

Mr. WEBSTER: I will offer in evidence for the defendant intervenors the list which the witness presents of the articles which may be so combined under Rule 10, and to which that advantage may exist in favor of the Chicago grocery jobber.

1124 The paper was marked "Defendant Intervenors' Exhibit 14" and here follows:

Third Class C. L.

Anchovies.
 B. Powder in Glass.
 Beef Extract.
 Bird Seed in B/l's, & Bxs.
 Butter Coloring.
 Brushes (in boxes).
 Campho.
 Candy.
 Cheese.
 Chocolate.
 Cocoa.
 Coconut in Glass.
 Coffee Condensed.
 Coffee Ex. in Glass.
 Cracker Meal or Dust.
 Dog Food in Glass.
 Fruit Oranges.
 Lemons Limes.
 Fruit Dried in Glass.
 Honey (in glass).
 Juices in Glass or Tin.
 Olive Oil in Glass.
 Rennett.
 Root Beer Extract.
 Soap Tablets.
 Vinegar in Glass

Freight Classification.

Fourth Class C. L.

B. Powder, N. O. S.
 Biscuit.
 Bluing.
 Citron.
 Cordage.
 Crackers.
 Cranberries.
 Cream of Tartar.
 Fruit, Dried.
 Fr. Juices in Wood.
 Honey in Cans & Kegs.
 Lemon Peel.
 Licorice Root.
 Milk, Canned.
 Nuts.
 Orange Peel.
 Pepper.
 Yeast.
 Allspice.
 Blacking, N. O. S.
 Fly Paper.
 Ginger (boxes).
 Ginger Root (bags).
 Matches.
 Smoked Meat (in bags).
 Spices, N. O. S.

Fifth Class C. L.
 Apple Butter & Pres.

Axle Grease.
 Bags, Paper.

R. 26. Beans.
 Beet dried & pickled.
 Bird Gravel & Sand.
 Bird Seed in Bags.

Candles.
 R. 26. Canned Goods.
 1. Catsup.
 3. Chicory.
 Cider.

3. Coconut, N. O. S.
 R. 26. Coffee.
 Coffee Extract, N. O. S.
 Coffee Mix. or Substit.

Dog Food, N. O. S.
 R. 26. Fish, Canned.
 R. 26. Gelatine.
 3. Ginger Ale.

Lard.
 4. Lentils.
 Live.

4. Macaroni.
 R. 26. Meats, Canned.
 3. Mince Meat.

Malt Extract in Glass.
Wax.
Witch Hazel.

Plug Tobacco, N. O. S.
Twine.

List of articles which may be shipped in mixed carloads at the rating shown, when destined to points, the rates to which are governed by the Official Classification.

(This sheet is copied from the present classification and is issued only as a matter of convenience, and is subject to the changes that may be made in the classification published in the salesman's *cost book*.) Minimum carload 30,000 pounds.

3. Mineral Water.
Molasses.
1. Mustard.
2. Olive Oil in tin.
1. Olives.
Peas.
Pepper Sauce.
1. Pickles.
Pie Crust & prepar.
1. Preserves.
1. Root Beer.
3. Sago.
R. 26. Sardines.
1. Sauce.
R. 28. Soap.
R. 26. Soda.
R. 26. Starch.
Sugar.
Syrup.
3. Tapioca.
3. Vinegar in wood.
Chloride lime.
Clothes pins.
Apples (dried).
Smoked Meats in boxes.
Paper.
Saleratus.
Fruit Jars.
Tooth Picks.
- R. 26. Vegetables, canned.
Cereals in pkgs.

1127 Q. State whether the Chicago grocery houses or occasionally a New York grocery house sell articles in this Missouri River zone under their own house brands or not?

A. The Chicago wholesale grocery houses market their goods in this territory largely under their own house brands or labels. New York wholesale grocery houses do not compete for this business.

Q. When the Chicago grocery house does sell articles in this Missouri River zone under their house brands state whether there is, or from the nature of things can be any competition in such articles?

A. There can be no competition from New York. House brands consist largely of domestic products such as canned goods. Domestic products and manufactures.

Q. By that process can canned goods which a Chicago house may sell under its own brand be designated simply by the can itself, or is there a label to the can by which it is known?

A. A label and trade mark on the label.

Q. And that trade mark of course precludes any other house from selling the article under that same trade mark?

A. Yes, sir.

Q. No matter where the other house should be?

A. Yes, sir.

Q. Then as to all the articles of that sort which are sold
1128 under such a trade mark there is no competition from any other house?

A. Not from New York, no, sir.

Q. No other house in Chicago would sell any article having the Franklin MacVeagh trade mark on it?

A. No, sir.

Q. I will call your attention to another thing, to wit, imported olives from Spain, spoken of by the witness representing Franklin MacVeagh & Company, state if you know how such olives if any are imported into New York or Chicago, whether they come in bottles or kegs and barrels?

A. Spanish olives are imported in large casks and repacked both in Chicago and New York into bottles and smaller packages.

Q. Then the railroad rate on the cask would be less than the rate on the bottled goods?

A. Yes, sir.

Q. Hence the New York man who would handle olives would import into New York in casks and then he would rebottle and pay at a higher rate for shipping the articles westward?

A. Yes, sir.

Q. And the Chicago house which imports all the way to Chicago in casks and rebottles in Chicago would therefore only pay the higher rate from Chicago west on the bottled article?

A. Yes, sir.

Q. That being so the Chicago house would have an advantage would it not over the New York house in dealing with that
1129 article if it desired to ship it west?

A. Yes, sir, the Chicago house has an advantage.

Cross-examination.

By Mr. McHUGH:

Q. You have said that the wholesale grocery houses should be localized, and that is true with respect to most of the distributing business isn't it?

A. I can only speak for the wholesale groceries. I judge it is so with others.

Q. It is important that with respect to the distribution of the products of the soil and with respect to the distribution of the things that are consumed that there be centers of distribution instead of having all that distribution concentrated in one big point?

A. Yes, sir.

Q. There is no doubt about that is there?

A. None.

Q. So that the system which would result in the decentralization of trade that has built up centers around in the country for distribution would be one that would conserve the interests of the country?

A. Unless there is some artificial barrier built up by the railroads.

Q. I mean the system that would do that would be the one that would be the most beneficial for the country wouldn't it? As between two contrasting systems one which would center the trade in one big city or at one big city at one end of a railroad and
1130 another big city at the other end, in contrast with that system a system that would allow the building up of these distributing centers around the country would be what the interests of the country would demand, wouldn't it, in your judgment?

A. Localization is the result of natural causes.

Q. I am talking about suppose we had two conflicting theories of rate making, one theory that would center the business at the east and at the extreme west in large cities there and the other would allow the building up of distributing centers where natural conditions permit, wouldn't you say that the interests of the country would be subserved by the system which would permit the building up of these distributing centers rather than building up big cities far away, isn't that your judgment?

A. I think so.

Q. You buy for instance canned goods in Iowa and canned goods in Missouri and ship them into your warehouses and then reship them on to your customers either east or west?

A. Yes.

Q. You are enabled to build up your distributing business in these lines by reason of the fact that you can ship them into Omaha and handle them in your warehouse and then reship them out to the consuming territory at a rate equal to what would be the rate from the original factory to the point of consumption; and
1131 that system of rates is what enables you to be the distributing agency of that particular business isn't it?

A. Yes, sir.

Q. And that system is essential to the building up of distributing centers?

A. I believe so.

Q. Coming to Rule 10 in the official classification, you speak of that as a discrimination in favor of the Chicago shipper or the Chicago grocer. That Rule 10 is a rule adopted by the railroads between New York and Chicago only?

A. Yes, sir.

Q. That Rule 10 is open to you if you want to avail yourself of it isn't it?

A. We are unable to avail ourselves of it.

Q. Suppose you did put yourself in position to avail yourself of it it would be open to you?

A. The rule has been in effect a great many years but I have never known of a single instance of a Missouri River jobber taking advantage of it.

Q. I do not know as you get my idea exactly. There is nothing in the rule limiting it to the Chicago jobber, anybody who wants to take advantage of that rule can do so?

A. Any one who wishes to ship to Chicago or to the Mississippi River can take advantage of the rule.

Q. The rule is not limited to anybody or any class of shippers by its terms, it is universal and is open to everybody who sees fit to take advantage of it?

A. Yes.

1132 Q. If you shipped a car load of these things from New York to Omaha couldn't you take that car and load it up and take advantage of that rule and run that car solid through to Omaha?

A. No, sir.

Q. You couldn't do that, you are sure of that?

A. It would have to be rebilled.

Q. That is a mere paper matter. You would just simply have to rebill it at the river, that is all?

A. It would have to be reconsigned also and a new bill of lading made out.

Q. So that if you did as the Chicago shipper does, and loaded that car up, a car load, you could ship that to the Mississippi River, re-consign it, and reship it right through to your house at Omaha without any trouble excepting the making out of a new bill of lading couldn't you?

A. We would have to have a warehouse or an agency established in order to handle the goods and re-weigh, receive them, etc.

Q. Do you mean to say you are quite sure that you could not take that car load shipment, ship it under that Rule 10 and re-consign that to Omaha without maintaining an agency to do it or to handle the goods?

A. I have figured over that many times and have never been able to figure out any process for doing it.

Q. Isn't this the trouble, that you do not buy in lots
1133 large enough to make a car load, isn't that why you do not use it and cannot use it?

A. We probably might not at times need the same product in the same quantities.

Q. It is the general rule that shipments of less than car load are more expensive than shipments by the car load?

A. We ship cars from New York every week almost of coffee, and coffee takes the fifth class rate under Rule 10 as well as all these other subjects. Now we could put in any one of those items listed there in the car of coffee and have it come along to the Mississippi River under Rule 10 if it was practicable to do it but it is not practicable to do it.

Q. It would be practicable if you had a car load of that material to come clear through to Omaha?

The WITNESS: You speak of coffee?

Mr. McHUGH: Yes, you ship your coffee through in car loads?

A. Yes.

Q. You load your coffee up in car loads?

A. Yes, sir, we can include any item that is in that fifth class list there in with the car of coffee and have it billed to the Mississippi River at the fifth class rate but I say we do not do that on account of the difficulties in having it rebilled and reweighed at the Mississippi River, etc.

1134 Q. Are you sure that in the matter of shipment under this Rule 10 the shipper must attend to this matter of rebilling and all, are you sure of that or isn't it the fact that the railroad attends to that and does that?

A. The railroad would not have the weight.

Q. Suppose that you would take a car of coffee and put in enough of these other things to make a car load under Rule 10 and that would come consigned through to you at Omaha, now there is an eastern classification east of the Mississippi River and the western classification west and there is always a rebilling isn't there?

A. There must be.

Q. In all shipments of merchandise there must be a rebilling at the river?

A. There must.

Q. That is all done by the railroads isn't it, you do not maintain any agency to do the rebilling at the river so isn't that all done by the railroads?

A. The rebilling would be done by the railroads.

Q. And the reconsignment, the issuing of the waybill, whatever is essential to the sending of that car on under the western classification is done habitually and regularly by the railroads isn't it?

A. Yes, sir.

Q. Some railroads bill clear through to Omaha from New York without rebilling at all don't they?

A. It has never been done to my knowledge.

1135 Q. You don't know?

A. I don't know.

CHARLES F. WELLER, a witness on behalf of the defendant intervenors, was duly sworn, and deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. Charles F. Weller.

Q. Your residence?

A. Omaha.

Q. Your business?

A. Wholesale druggist.

Q. With what house?

A. Richardson Drug Company.

Q. Located in Omaha?

A. Yes, sir.

Q. You may state if you know the firm of Whitelaw Brothers in St. Louis?

A. Yes, sir.

Q. Do you know the lines of business in which this company is engaged?

A. Yes, sir.

Q. In a general way are you familiar with the commodities that come from the Pacific coast terminals that are dealt in by drug and chemical houses?

A. Yes, sir.

Q. I want to call your attention to a few of the articles that for your information I may state have been referred to heretofore by other witnesses as articles which were controlled by the Pacific coast terminal rates east bound and I want to ascertain whether
1136 any considerable quantities of the said commodities are articles handled in this market, and I will call your attention to sugar alcohol and ask you to state whether any quantities of that article are consumed or handled in this market from the Pacific coast terminals?

A. There is no very large amount of alcohol handled from the Pacific coast, owing to the fact that it is absorbed between—what is made there is absorbed between here and San Francisco largely. They make a great deal of denatured alcohol and that sells as far east as Denver but owing to the fact of there being a distillery here in grain alcohol there is not a very great amount coming in here except when car load shipments of wines are made alcohol is sometimes added to make up the car.

Q. In such cases it gets into this market on the Missouri River?

A. Yes, sir.

Q. Do you know whether in like cases any quantity of that article would go on to Chicago or St. Louis?

A. Not a great deal of it. The Pacific coast is not an alcohol market really.

Q. Take another article borax and boracic acid, what is the fact as to that article?

A. Borax and boracic acid originate on the Pacific coast. That is there is more crude borax there than any other place in the world, in Nevada and in the Death Valley in California, and it is the
 1137 shipping point for crude borax largely and also for refined borax. The refined borax is shipped, used to be, to Omaha and to other intermediate points, based on the Missouri River freight rate, but of late years conditions have changed, and the Pacific coast borax company which now controls practically the entire out-put on the Pacific coast have their general offices in Chicago and New York. As a consequence borax is shipped from the Pacific coast to Chicago and then reshipped here, we of course having to stand the differential.

Q. So while all the borax comes from California you practically pay the rate to Chicago and pay the rate back from Chicago to this point?

A. Pay the railroad rate back.

Q. State whether or not there are refineries in Chicago for the handling of borax?

A. Yes, I think the Pacific Coast Borax Company refine it there. I am not sure about that, however. They did not use to refine it there.

Q. There are, are there not, refineries of that article in California?

A. Yes, the Pacific Coast Borax Company refine it there.

Q. Take another Pacific Coast article, Cascara Sograda?

A. That is a root that is used largely in manufacturing and is shipped to all points from California. It originates there
 1138 and it is handled principally by manufacturers of pharmaceutical fluid extracts, etc.

Q. In that connection what about the Eucalyptus oils from the eucalyptus tree?

A. That is shipped from California, too.

Q. Are considerable quantities handled in the Missouri River Valley?

A. The Cascara is shipped in car loads but Eucalyptus oil is not.

Q. Another article, Benhac Insect Powder?

A. That is made from a flower that originates in California and it is made nowhere else except in California. That is not shipped in car load lots, but is handled in considerable quantities by wholesale druggists generally throughout the United States. We have got a shipment on the way now of several thousand pounds of it.

Q. Another article, Syrup of Figs?

A. That was formerly manufactured altogether on the Pacific coast. Owing to conditions however the company thought best to establish manufacturing plants also in Louisville Kentucky, so they have two, one on the Pacific coast near San Francisco and one near Louisville Kentucky. The Syrup of Figs that we get in this market comes from Louisville. It takes less time to get it here.

Q. But controlled by the California concern?

A. Controlled by the California concern. They manu-
 1139 facture it in Louisville.

Q. Figs, whatever there may be of that article in the syrup comes from California?

A. If there are any figs in it yes.

Q. Another article, quick silver?

A. Quick silver comes from California and is handled in large quantities by manufacturing chemists.

Q. You said that large quantities of it were used. Let me ask you whether the quantity would amount to millions of dollars worth every year?

A. Well, I presume it would amount to over a million anyhow, the amount of quick silver that is sold in this country.

Q. Let me ask you whether there are any olive oils that come from California that are handled in this market?

A. The California olive oil proposition is becoming something of considerable importance. For a great many years the California olive oil was not popular with the people of this country owing to its slightly peculiar flavor, a little different from the French and Italian oil, but it is growing in favor and I may say that probably 40 per cent of the olive oil that is handled in the west is California oil. It is becoming quite a factor.

Q. Another California article that takes the Pacific coast terminal rates, brandies?

A. That is the principal product of California, brandies
1140 and wines. California wines and California brandies are sold in immense quantities all over the country, and not only in this country but exported to Europe where it is fixed up and comes back as fine French wines.

Q. What do you say as to the quantities of it that are received and handled in the Missouri River cities?

A. I presume that in the Missouri River towns from Kansas City to Sioux City there are probably from two to five cars a month sold.

Q. Of the brandy alone?

A. No brandies and wines together. Possibly more than that. I think that is a very conservative statement.

Q. Do you include in that orange and apricot cordials as they are now called under the Pure Food law?

A. Those are not handled very largely by wholesale druggists but I know that there is quite a quantity of those goods sold to liquor dealers generally.

Q. In this market?

A. In this city and in other cities as well.

Q. Another western product that takes that rate, mustard, what do you say as to that?

A. The California Mustard is the best that we can get anywhere, and while there is a considerable amount of German mustard imported into this country it is a very small seed and California is the best and is used largely by druggists. We use more of it
1141 than we do that of any other country.

Q. About California strained honey?

A. That is quite an item. There is a great deal of it sold. We do not handle very much of it in the drug line. We handle it for medicine only, but we will handle from five to ten barrels a year. We do not buy it by the car load.

Q. It is handled by others?

A. Handled by grocery houses. There are concerns all over the country that put up honey in small jars like they do fruit, and it is sold to grocery houses I guess very extensively.

Q. Let me ask you about the California bees wax?

A. That is another thing that there is hardly enough of it. We cannot get enough bees wax to supply the demand. There is probably not more than a hundred thousand pounds of bees wax shipped east from California a year.

Q. Do you know where gum camphor comes from?

A. It comes principally from the Island of Formosa, although there has been an effort made to raise the camphor tree in Japan, and they have met with some success. Also in China, but the larger proportion of the product, in fact I may say four-fifths of it comes today from the Island of Formosa which is under the control of the Japanese government.

Q. Does any part of that come through the Pacific coast terminals by rail to this country?

A. Yes.

Q. In considerable quantity?

A. Yes, there is a considerable quantity of it comes that way. Of course a great deal of it finds the New York market and is shipped from New York back, going around by water, but the Japanese Syndicate have agents in Portland and San Francisco and Los Angeles and of course they sell what they can. The only trouble we have ever found in purchasing camphor direct from Japan is the delay in getting it, and the Syndicate always carries a stock in the New York market.

Q. Let me ask you when speaking of that and other Japanese articles whether there are any considerable quantity of those which are handled in this market which may come through the Pacific Coast terminals?

A. Yes, the Japanese are a pretty ingenious people and they are getting into this market now largely on bristle goods, tooth brushes, hair brushes and goods of that class, and there are millions of dollars worth shipped from Japan into this country every year and I presume a large proportion of them come through the Pacific coast gateway.

Q. For some other Pacific coast articles let me mention crushed fruits or crushed pine apples?

A. The fruit proposition is a very large one. Of course you take druggists generally they handle the crushed fruits for soda fountain supplies but of course that is nothing in comparison with the other fruits that are shipped dried and canned and fresh from California. It is nothing in comparison with them although there are large quantities of the finished product or canned goods shipped.

Q. And the crushed pine apple comes from Hawaii?

A. That is quite an item but it always comes that way. There is a good deal of it imported. It comes into San Francisco and then is shipped on here. Probably two or three car loads come in here every spring of crushed pine apple.

Q. In addition to the articles which you have mentioned which would take the Pacific coast terminal rate, let me ask you whether there is another percentage of your articles handled by drug and chemical houses that comes from the interior of the country say from Cleveland and Detroit and westward, including Chicago and St. Louis, that is handled in this market. I am not speaking about items but simply whether there is a large percentage?

A. There are certain concerns in Cleveland and New York that get into this market with certain heavy chemicals like Harshaw, Fuller & Goodman and the Sherwin Williams Paint Company and they get their goods probably through the eastern gateway by way of New York. They come in that way and then are distributed.

Q. Getting back now to the thing I asked you about in the 1144 first place are you somewhat familiar with all the articles which are handled by Whitelaw Brothers of St. Louis?

A. The majority of them.

Q. Are you familiar likewise with the reduction of rates ordered by the Interstate Commerce Commission on the first five classes which are involved in this lawsuit, to wit, 9 cents on first class and so on down to the fifth?

A. Yes, sir.

Q. I want you to state now whether in your opinion that reduction of rates on those five classes will in any wise injure or detrimentally interfere with the business which is conducted by Whitelaw Brothers in St. Louis, and if not you may give your reasons why it will not?

A. I cannot see that Whitelaw would be interfered with any. I do not think it would injure their business at all. From the very nature of their location they have advantages that we cannot expect to have, and Chicago has advantages too on account of their lake freights, but it certainly could not be expected that Whitelaw and other intermediate houses would control the jobbing trade of the Missouri River. Jobbers have to buy from the same parties that Whitelaw buys from largely. When they sell the retail trade they come in direct competition with the jobber. They are simply jobbers in special lines.

Q. You may state in that same connection if you know 1145 whether or not the goods handled by Whitelaw Brothers heretofore have enjoyed the advantages of commodity rates, rates which would not be affected by reduction on the first five classes?

A. We have enjoyed them up to a short time ago but I guess the commodity rates so far as I know have been done away with. At least so far as our line is concerned we do not know anything about commodity rates any more. You take such goods as saltpeter, which is handled largely by Whitelaw, sulphur, oil of tar and turpentine and soda ash and all these heavy crude drugs or chemicals which are handled by these large supply houses, there was a commodity rate on all of them. For instance you take the item of saltpeter, there used to be a published rate, railroads used to make a rate of 36 cents a hundred to Omaha and they made a rate sometimes as low as 26 on sulphur to Omaha. Now the rate is 44.

Q. Do you know whether or not the amount of business done in

the Missouri River Valley by Whitelaw Brothers has been diminished by reason of this abolition of the general application of the commodity rates?

A. They are on a par with the rest of us. They have got the same opportunity to sell that they had before at the advanced rate, which they of course have got to add to the cost of their goods. If they do not get the commodity rate they have to pay more money for goods in the way of freight and they must advance their prices just 1146 as we do ours.

Q. Then they are not affected to any greater or less degree than the Missouri River jobber in the same article?

A. They are affected no more than we are. In fact they have some little advantage on anything that is shipped by the New Orleans gateway because it can come all the way through to St. Louis by water while we have got to pay the rail rates.

Cross-examination.

By Mr. McHUGH:

Q. With respect to these items that you have mentioned where there are no commodity rates there are car load rates?

A. Yes.

Q. And the dealer who can ship to the point of distribution at a car load rate and utilize that rate has an advantage over a competitor in the territory who has to ship into that territory at a less than car load rate, isn't that true?

A. That is true.

Q. For all the territory that you supply to the west of Omaha and northwest of Omaha you ship in in car load lots?

A. Yes, sir.

Q. You ship out to your customers as a rule in less than car load lots?

A. Yes.

Q. Whitelaw Brothers competing with you in this territory ship into St. Louis at a car load rate but they ship from St. Louis into this territory as a rule at less than car load rates?

A. That is true.

Q. So that they pay to get to the territory of the consumers where they compete with you west of Omaha, a higher rate to deliver the product to the customer than you do?

A. Certainly, and it is perfectly proper that they should.

Q. But there is that advantage you have?

A. We have that advantage on western shipments but if we were going to ship down into their territory they would have the advantage over us.

Q. If the St. Louis man gets a low rate in from any point you in shipping your car load to Omaha can get that same low rate to St. Louis?

A. We get the same rate to St. Louis practically as they do you, sir.

Q. You ship from St. Louis at the car load rate and he in compe-

tition with you west or within a circle where the distance is further from St. Louis than from Omaha uses the higher rate necessarily?

A. Yes. There is one thing you must consider though in connection with that that conditions have changed very materially in the last four or five years. The business of the country is becoming localized. Whitelaw has got no business out west of us. Let him do business in the territory tributary to St. Louis. I remember 1148 twenty years ago when Chicago wholesale drug houses had from five to six traveling men in the state of Nebraska and they are not here any more.

Q. You think that the wholesale dealer at St. Louis has no moral or political right to compete with you?

A. Yes, but what I am speaking about now is from a business standpoint. We started a house in Omaha on account of the conditions that were prevailing because we could not reach this western trade from St. Louis on account of the freight rates. We wanted to be in a position to supply this Missouri Valley trade and consequently we started here and kept our house in St. Louis as well.

Q. So that as a matter of fact you think the local development of distributing centers ought to proceed to practically a monopoly?

A. No not at all. If Whitelaw Brothers want to do business in this territory up here they should do the same as we do, start a branch. We would like to have them come here.

Q. You don't think that the rate on the products in which you deal ought to be from St. Louis to Grand Island less than the rate from St. Louis to Omaha and from Omaha to Grand Island?

A. Certainly not. It ought to be the same on the two articles if they are going to do business here.

Q. That is the only way to do business here.

A. Yes.

1149 Q. You say borax is controlled by the Pacific Coast Borax Company?

A. Yes.

Q. There is a rate on borax from California to Omaha that is the same as the rate from California to Denver and to Chicago?

A. It is the same as the rate to Chicago. I don't know about the rate to Denver. The rate to New York is also the same.

Q. Why can't you buy at the Pacific coast and ship?

A. For the same reason that a railroad could not give me a pass over their line under present conditions.

Q. Is it against the law for you to buy in California?

A. They control the situation. It is not against the law, but who are you going to find to sell you? The Pacific Coast Borax Company controls the situation.

Q. So that the reason why you have to go to Chicago for your borax instead of buying it in California is the commercial condition of the borax trade?

A. Controlled by the one company, yes.

Q. It is not a rate condition?

A. The railroad rate hasn't anything to do with the price of borax.

1150 Redirect examination.

By Mr. WEBSTER:

Q. The Richardson Drug Company with which you are connected in Omaha had its original house in St. Louis?

A. Yes, sir.

Q. And still maintains a house there?

A. No, not now. We sold out our interest in St. Louis to the Meyer Brothers Drug Company. Meyer Brothers are there. We have nothing to do with it.

Q. No financial interest in it now?

A. No, the Richardson Drug Company have only one establishment and that is here.

Q. When your branch was established here you had your home house in St. Louis?

A. Yes. We did not discontinue the St. Louis House except for the reason that we had a fire there in 1889 which almost destroyed the premises completely and Mr. Richardson, Sr., was at that time seventy-two years of age, and the two Richardson boys got tired of the drug business and wanted to go into something else, so Meyer Brothers offered us a bonus for the good will of the business, etc., and we sold out. We quit business there simply because of circumstances. I could not go back there and run that business and run this too. So we simply sold the plant there, what was left of it.

Since then we for several years maintained a warehouse in 1151 St. Louis for the purpose of—while these commodity rates were on we maintained a warehouse in St. Louis and also in Chicago for the purpose of supplying certain trade, but we have now done away with those warehouses.

At this point a recess was taken to two o'clock, and upon reassembling at two o'clock the depositions were continued as follows:

RICHARD A. W. NUGENT, a witness produced, sworn and examined on behalf of the defendant intervenors testified as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. Richard A. W. Nugent.

Q. Where do you live?

A. Omaha.

Q. What is your present business?

A. Superintendent of the Omaha Paint & Color Works.

Q. You may state if you know the Sherwin Williams Paint Company of Cleveland Ohio?

A. Yes, sir, I do.

Q. How long have you known of that company?

A. About thirty years.

Q. You may state what experience, in a brief way, you have had in the last thirty years as to the manufacture of paints and varnishes?

1152 A. I have been manufacturing steadily all that time and longer.

Q. Where were you so engaged and employed before you came to Omaha?

A. Heath & Milligan Manufacturing Company in Chicago for twelve years.

Q. Where else? A. Johns Manufacturing Company of New York City.

Q. For how many years?

A. Three years.

Q. Both places in the manufacture of paints and varnishes?

A. Yes, and the Chilton Manufacturing Company for fifteen years. Sudam, Lawrence & Company known as the Pittsburg White Lead Works.

Q. Take it all in all you have been engaged in the actual business of manufacturing paints and varnishes for how many years?

A. I will just give you the other one.

Paint Company, Cleveland, Ohio, about forty years.

Q. Do you know the different factories owned by the Sherwin Williams Company aside from the one at Cleveland?

A. Yes, sir.

Q. Do you know of their factory at Montreal Canada?

A. Yes, sir.

Q. Have you at any time seen that plant and been through it?

A. Yes, I had charge of it one time temporarily and I sold it.

Q. Do you know of the plant of the Sherwin Williams Company at Newark New Jersey?

A. Yes, sir.

Q. Also of their factory at Kensington?

A. Yes, sir.

Q. You know also do you then of the other paint and varnish manufacturers in the United States?

A. Yes, sir, most of them.

Q. I want to get at the raw material which enters into the manufacture of dry paints such as are manufactured by the Sherwin Williams Company and first let me ask you whether linseed oil is one of the component parts of dry paint?

A. Not dry manufacture. That is chemically dry colors.

Q. Is that used to any great extent in the manufacture of paints?

The WITNESS Linseed oil?

Mr. WEBSTER: Yes.

A. Largely.

Q. Let me ask you do you know whether the Sherwin Williams Company either own or control a linseed oil mill that is located at the City of Cleveland and close by their factory in that city?

A. They do. It was originally called the Griswold Dunham factory. It is now called the Cleveland Linseed Oil Company.

Q. How close is that linseed oil mill or factory to the factory of the Sherwin Williams Paint Company?

1154 A. I couldn't say how many hundred feet it is. It is probably about three hundred feet from it.

Q. Do you know whether that oil mill is of sufficient capacity to supply the Sherwin Williams Company with such linseed oil as they need?

A. It always has been more than they could use.

Q. Let me ask you as to some of the other linseed oil mills. What about Minneapolis?

A. They turn out a great quantity of oil.

Q. Is Minneapolis regarded as one of the chief sources of supply of linseed oil?

A. Yes, sir, it is.

Q. Are there any linseed oil mills in Chicago?

A. Yes, sir.

Q. How far removed are they probably from the Kensington factory of the Sherwin Williams Company?

A. They are about 22nd Street. There is one, Wright & Lawther mill on 22nd street. It is the distance from there to Kensington. 22nd street I think is the nearest mill to them.

Q. It is about how far?

A. Five or six miles.

Q. Both in the corporate limits of the city of Chicago?

A. Yes, sir. That is only one mill though.

Q. Then the seed from which linseed oil is made grows in what part of the country?

A. In the west here.

Q. State whether there is a linseed oil mill in Omaha?

A. Yes, sir, a good one.

1155 Q. Another of the component parts of paint is carbonate of lead is it not?

A. Yes, sir.

Q. Let me ask you whether there is a factory for the production of carbonate of lead in the city of Cleveland where is the factory of the Sherwin Williams Company?

A. Yes, sir, there is.

Q. What would you say as to the capacity of that factory to supply that company with their carbonate of lead?

A. They have been doing a large business for a good many years, called the Morley White Lead Company.

Q. At what other points in the west can carbonate of lead be obtained?

A. In Buffalo, Chicago and that vicinity.

Q. Do you know about the places in Kansas and Colorado?

A. No, sir, I do not.

Q. I will call your attention to the fact that the man who spoke for the Sherwin Williams Company said that there was such a place at Coffeyville, Kansas, from which they obtained some raw lead?

A. I don't know that.

Q. Another component part of the paint is oxide of zinc is it not.

A. Yes, sir.

Q. Where does that chiefly come from?

A. Some from Colorado and Joplin, Missouri.

Q. So the raw material for the oxide of zinc is also a western product?

A. Yes, sir.

1156 Q. Are those three things, linseed oil, carbonate of lead and oxide of zinc the three principal elements which enter into the manufacture of paint?

A. Yes, sir.

Q. Next to the question of varnishes I want to speak of the raw material that enters into the manufactured product. And first where do the gums come from or are obtained that enter into the manufacture of varnish?

A. Principally in New Zealand.

Q. Some perhaps from South America and Africa and the Philippine Islands?

A. Yes, they produce some.

Q. Let me ask you whether linseed oil is one of the component parts of varnish?

A. Yes, sir.

Q. In the manufacture of varnish by the Sherwin Williams Company of Cleveland they could get the linseed oil at their own town within three hundred feet of their factory if they wanted to?

A. Yes, sir.

Q. I suppose at the other places you have named, Minneapolis and Omaha or Chicago if they pleased?

A. Yes, sir.

Q. Furthermore let me ask you whether turpentine is one of the elements that go into the manufacture of varnish?

A. Largely, yes.

Q. That chiefly comes from where?

A. Savannah, Georgia.

Q. Do you know whether some may come from Florida?

A. Pensacola, Florida, yes, sir.

1157 Q. Taking varnish such as would be used for the varnishing of the outside of railroad passenger cars if you please which might be termed an outside hard varnish, in that case I would ask you to state about what percentage of the man-a-red varnish would consist of the gums?

A. It would be fully fifty per cent.

Q. Forty to fifty per cent?

A. Yes, sir.

Q. And the remainder would be turpentine and linseed oil?

A. Yes, sir.

Q. Taking the cheaper grade of outside varnish would the quantity of gums diminish, the percentage?

A. Yes, sir, it will.

Q. And the percentage of the turpentine and linseed oil increase in like ratio?

A. The turpentine would increase but not so much the oil.

Q. Of the outside varnishes are there many different grades?

A. Yes, there are several.

Q. Then the cheaper grades of outside varnish are composed of what chiefly?

A. Resin and gum together.

Q. In that is there practically any gum whatever?

A. Hardly any. What we call furniture varnish. I——

Q. In that sort of varnish how much gum is there if any at all?

A. About ten per cent.

Q. And the remaining 90 per cent is what?

A. May be resin, turpentine.

1158 Q. Take what might be called inside varnish, about what percentage of that, what parts divided into tenths if you please what part would be gum?

A. Take inside varnish we use different gum and different resin. We use a G resin. G is for cheaper varnishes. K is for the better grade of varnishes for inside use with the gum.

Q. Tell me about what part would be gum and what part resin and what part turpentine and what part linseed oil?

A. It runs three tenths gum, two tenths resin and the balance turpentine and oil.

Q. In that case the gums would be a little less than one third of the entire product?

A. Yes, sir.

Q. Do you know about how many pounds of varnish there are in a gallon of the product?

A. Seven and a half to eight pounds.

Q. That would be then about in round numbers twelve gallons to a hundred pounds in weight?

A. Yes, sir.

Q. That is worth or costs to manufacture about how much, taking the average product.

A. From fifty cents up.

Q. About 50 cents a gallon?

A. From 50 cents up.

Q. According to the grade?

A. Yes, sir.

Q. Would 50 cents be about an average of the cost?

A. Yes, sir.

1159 Q. That would be then a cost of about \$6 for a hundred pounds of varnish?

A. Yes, sir.

Q. That sells in the market for about what price?

A. One dollar.

Q. One dollar a gallon, or \$12 for a hundred pounds?

A. Yes, sir.

Q. That is a 100 per cent profit over the cost?

A. Yes, sir.

Q. Then on that \$6 of profit, even first class, a reduction of 9 cents on the hundred pounds even though it were shipped from New York would still leave \$5.91 profit on a hundred pounds of varnish?

A. Yes, sir.

Q. Is it not likewise true that much of that varnish sells for a much higher price than that you have stated?

A. Yes, sir.

Q. On the higher grades the price is how much a gallon?

A. About four and a half or five dollars.

Q. In that case the profit on a hundred pounds would be then how much?

A. It would be according to the grade of the varnish. We estimate varnish according to the age of it and the settling of it. The higher grades from the quantity of 50 per cent gum would cost more and would require more time to age it for outside use. We have to age it and settle it and of course it is quantity and time it is being settled and all and we have to get a pretty good price for it.

Q. It don't cost any more to manufacture than cheaper 1160 grade?

A. The amount of gum is different.

Q. So the profit in that case instead of being 100 per cent would be two or three or four hundred per cent profit?

A. Varnishes were sold some time ago on six months' time. That was taken into consideration also.

Q. And a hundred pounds of this four or five dollars a gallon varnish would be \$50 or \$60 a hundred pounds nearly all of which is profit except time and credit on sales, and so on?

A. We take into consideration of course when the varnish is made that it is not fit to go out, those better grades of varnish and we have to settle it and age it before it is able to go out.

Q. By the way there is a white lead factory right here in Omaha is there not?

A. Yes, sir.

Q. The Carter White Lead Company has its mills here?

A. Yes, sir.

Q. From your knowledge of the situation of the Sherwin Williams factory at Cleveland and the linseed oil mills and the white lead works in that vicinity and in the western country what do you say as to its location at Cleveland whether or not it is or is not substantially the best location in the United States for the economical production and sale of paint and varnish?

A. The fact of the matter is they would not be owning that linseed oil factory today if it was not to their interest to own it.

1161 Q. That may be but you did not quite answer all that I wanted?

A. They are certainly a well located factory. Could not be more convenient possibly. It is more of an accident than anything else. Originally Mr. Dunham was killed at that factory. That is how they became interested in the factory. It was originally owned by Griswold & Dunham. There was never an intention at that time of having a paint factory near it. The paint factory was built from an old building and has been increased and built upon until it is almost up to the linseed oil factory. They have got a good plant there.

Cross-examination waived.

1162 WILLIAM JAMES CULLEY, a witness produced, sworn and examined on behalf of the defendant intervenors deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your full name?

A. William James Culley.

Q. Are you connected with the Kirkendall Boot and Shoe Manufacturing establishment in Omaha?

A. Yes, sir.

Q. Are you familiar with the various tanneries in the western part of the United States, central and western part of the United States, from which leather is produced which is used for the manufacture of boots and shoes?

A. Yes, sir.

Q. I hand you your own memorandum. You can use it to refresh your memory. Give us the names of the tanneries where leather is tanned in the state of Illinois and in the vicinity of the City of Chicago, giving the names of the different tanneries that are located in that locality?

A. In Chicago Illinois, Chicago Tanning Company, Joseph N. Eisendrath & Company, Eisendrath Schwab & Company, J. Greenebaum, Gutman & Company, Monarch Leather Company, Griess Pfleger & Company, Wilder-Manning Tanning Company. In Illinois State outside of Chicago, Woepel Leather Company, Morris Illinois, Wilder-Manning Tanning Company at Waukegan, 1163 Illinois, Hess & Hopkins at Rockford Illinois, H. W. Price & Company, Rockford Illinois. At Momence Illinois, Melby Hanson.

Q. State whether there are any considerable number of tanneries in the State of Michigan.

A. Quite a good many.

Q. You may give the names of the principal tanneries in Michigan?

A. Alpena Michigan, Alpena Hide & Leather Company, Alpena Michigan, C. Moench & Sons Company, Sheboygan Michigan, Pfister & Vogel, Grand Rapids Michigan, Eagle Tanning Company, Manistee Michigan, American Hide & Leather Company, Grand Rapids Michigan, Wallin Leather Company.

Q. To interrupt a moment, you mentioned the American Hide & Leather Company as one of the companies of the state of Michigan. I want to ask you if that company is one of the largest tannery companies in the United States?

A. Yes, sir.

Q. And it has tanneries in other places besides those in the state of Michigan?

A. Yes sir.

Q. How about the state of Wisconsin?

A. There are a great many tanneries there.

Q. Will you give the names of some of the principal ones in that state?

A. Milwaukee, A. F. Gallon & Sons, Pfister & Vogel
1164 Leather Company, Albert Frastel & Sons, Herman Zohrlant
Leather Company George Martin Leather Company. Fond
du Lac Wisconsin, Fred Rueping Leather Company, Kenosha Wis-
consin N. Rallen Sons Company, Racine, D. B. Eisendrath Com-
pany. The United States Leather Company have about seven tan-
neries also in this state, the American Hide & Leather Company two
tanneries.

Q. The United States Leather Company that you speak of having
seven in the State of Wisconsin you might name the different towns
where their different tanneries are located?

— Medford, Mellen, Prentice Rib Lake, Stanley, Tomahawk,
Westboro.

Q. What do you say as to whether the United States Leather Com-
pany is or is not one of the largest tanning companies in the United
States?

A. It is the largest in the United States.

Q. Aside from these are there also tanneries in the state of Cali-
fornia?

A. Yes, sir.

Q. Do you know about the number without stopping to give the
names?

A. About fifteen or twenty.

Q. Are there any large number in the south, in the State of
Georgia, if so about how many?

A. About twenty.

Q. Is there any considerable number in Minnesota?

A. Quite a few.

Q. Name about the number and the principal one?

A. Seven, the principal one being S. B. Foot & Company,
1165 Red Wing.

Q. How long has the company with which you are con-
nected been engaged in the manufacture of boots and shoes in
Omaha?

A. About ten years in Omaha.

Q. You may state whether or not the different kinds of leather
used by that factory comes from these western tanneries that you
have mentioned, or some of them?

A. Yes, sir, a great many of them?

Q. You know I suppose do you not that the large slaughtering
houses of cattle are at Omaha and Kansas City and in Chicago?

A. Yes, sir.

Q. What would you say as to whether the tanneries that you have
mentioned in these western states were of capacity sufficient to
produce all the leather needed to supply all the people who live in
this western country with boots and shoes?

A. I should think so.

Cross-examination.

Mr. McHUGH:

Q. Have you given all of the tanneries in the United States?

A. No, sir.

Q. Have you given all of the states where there are large tanneries?

A. Not quite all.

Q. There are large tanneries in the east are there not, east of Pittsburg and Buffalo.

A. There is quite a number.

1166 Q. So the eastern shoe manufacturer has tanneries in his territory and the western shoe manufacturer has tanneries in his territory?

A. Yes.

Q. Do any of the western manufacturers of boots and shoes get any leather from the east?

A. Very little.

Q. Is there any imported leather used in the manufacture of shoes in the west?

A. Yes, sir.

Q. That is imported through the Atlantic ports?

A. Yes, sir.

Q. And comes principally I suppose through New York and Baltimore?

A. I think so.

Q. With this distribution of tanneries and the distribution of factories it is nevertheless essential that a proportionate and relatively equal rate be given to manufacturers so that they can compete in the territory, that is true isn't it?

A. I think so.

Q. For instance you have a manufactory here?

A. Yes, sir.

Q. And the Roberts Rand Johnson has a factory in St. Louis?

A. Yes, sir.

Q. You compete with them through Colorado and this western Country?

A. Yes, sir.

Q. The rate on boots and shoes from St. Louis where their factory is to Denver and these points is the rate to Omaha plus the rate from Omaha to Denver and these points?

A. I should think so.

1167 Q. That is the fact about it. So you compete with them on that relative equality. Now do you think that the question of location of tanneries would make it fair to you to give to the Roberts Rand Shoe Company a rate from St. Louis to Denver less than the rate from St. Louis to Omaha and Omaha to Denver?

A. No.

Adjourned.

1168 On April 10th, 1909 the parties met at Room 704 Robi-
deaux hotel, St. Joseph Missouri.
Present as before excepting Mr. Fyffe and Mr. Walter.

THOMAS B. CAMPBELL, a witness produced, sworn and examined
on behalf of the defendant intervenors deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. Thomas B. Campbell.

Q. Your residence?

A. St. Joseph Missouri.

Q. Your business?

A. Wholesale dry goods.

Q. How long have you been in the dry goods business in the city
of St. Joseph Missouri?

A. Thirty seven years.

Q. Are you familiar with the dry goods houses on the Missouri
river including the cities of Kansas City and St. Joseph and Omaha?

The WITNESS: Do you mean familiar with their names?

Mr. WEBSTER: Yes and general business?

A. Yes, sir.

Q. Are you familiar with the dry goods houses in the jobbing
trade now existing in the cities of New York, Philadelphia and
Chicago?

A. Yes, sir.

Q. You have been advised have you that Marshall Field & Com-
pany through their representative have given evidence in this
1169 case that the reduction of rates ordered by the Inter-state
Commerce Commission would be detrimental to their busi-
ness I am not asking you to state what it was but if you have been
advised of that fact.

A. Yes, sir.

Q. You may state whether in your opinion the reduced rates or-
dered by the Commission would have the effect of permitting New
York jobbers of dry goods to increase their trade in the Missouri
river country west of here in competition with and to the detriment
of dry goods houses in Chicago or St. Louis?

A. I do not think so.

Q. You may state in a general way your reasons for that opin-
ion?

A. In the first place the jobbing dry goods business of New York
City has for a great many years decreased in this section of the
country under the conditions that have existed. Many houses that
were in existence in New York as jobbing houses years ago or more
have gone out of business. I could mention the names of several,
Sweetzer Pembroke & Company, Lee Tweedy & Company, Bates
Reed & Cooley, E. S. Jaffray & Company and probably others. The
generally accepted reason for those houses going out of business in
this section of the country is that the increase of population has

been towards the west, markets have been established, new houses have sprung up, stocks have increased, creating markets nearer to the consumer which carried stocks sufficient to meet their demands and their requirements has enabled them to get their supplies very much quicker, and time is a very important element in the dry goods business. The houses that I have mentioned have gone out of business entirely and the houses remaining there are doing less business every year in this section of the country.

Q. You may state whether that is the result of the railroad rate conditions that these houses have gone out of business in years past, or whether that is the result of commercial conditions and the development of the western country as you have described?

A. I do not think the railroad rate has had anything to do with it at all. I think it is the natural trade conditions that have developed.

Q. State whether a reduction of 9 cents per hundred on first class from the Atlantic seaboard to the Missouri river would or would not tend to the establishment of new jobbing houses in the dry goods line in the Atlantic seaboard territory?

A. I am satisfied it would not establish a single one.

Q. What would you say as to its effect upon dry goods houses already existing in the city of Chicago or St. Louis?

A. I do not believe that a 9 cent reduction would make any difference whatever in the dry goods business.

1171 Q. You may give your reasons for that opinion?

A. The reduction is so slight in freight that you could hardly figure it down to a single or particular item in the dry goods business. For instance in calico it takes seven yards to weigh a pound. It is very cheap goods. They are always sold on either a quarter or half a cent a yard scale, and you could not figure on yards and dozens and grosses, and that is the way dry goods are put up, on a 9 cent per hundred weight rate, to make a sufficient difference in price to be noticeable to the trade if you figured on each particular item, and I do not believe that a 9 cent reduction on freight would make any difference whatever in the conditions existing between these competitive dry goods houses.

Q. State from whom the dry goods jobbers on the Missouri buy their material, their commodities, by which I mean to ask you whether you buy your commodities from jobbing houses in New York or Atlantic seaboard territory or whether you buy from the manufacturer?

A. Manufacturers altogether.

Q. Let me ask you then whether the Atlantic seaboard jobbers sell any goods whatever to jobbers on the Missouri river?

A. In very rare instances and in very small amounts. For instance sometimes you cannot get an immediate delivery from a manufacturer and in that case rather than be without the goods as a last resort we will instruct our buyer to go to the jobber in New York if he happens to have some of these goods on hand and buy a few of them and pay the jobbing price for them in

order to supply our demand until we can get the goods from the manufacturer; but we do not use the New York jobbers at all as a means of supply.

Q. Under present existing conditions you may state about how far west from New York City any dry goods jobbing houses now existing there do business?

A. That I could not answer. I do not know their business. I know that we do not come in competition with New York jobbing dry goods houses here to any extent at all.

Q. What would you say as to the general question whether in a general way they do any considerable business west of the Alleghany Mountains?

A. They may sell some goods as far west as Ohio, through Pennsylvania and possibly in the south. Along the Atlantic seaboard is where their principal business is. They may in some instances sell some goods out in this country to some very large department stores but not to the general trade as we term it. The fact is that I do not know of any New York jobbing house at this time, nor have I for some years that has been traveling this country. When I traveled, a good many years ago, all of the New York houses had
1173 regular travelers make this country out here. They did from Boston and Philadelphia. Today I do not know of any New York jobbing house that is traveling this country regularly, that is this western country in which we sell goods.

Q. State if you know whether it would make any difference to the manufacturer whether his goods are purchased by a jobbing house in Chicago, St. Louis or on the Missouri river?

A. None whatever.

Q. To you people who do jobbing business on the Missouri river the cost to you is the original cost of the goods plus the freight rate to your place of business?

A. Yes, sir.

Q. Then in the event of a reduction of the freight rate to the Missouri river on dry goods what is the result as to whether the people to whom you sell would get the benefit to a degree of that reduction, and your territory through which you are doing business correspondingly enlarged?

A. To answer that question we would have to take into consideration the competition that we have. We are so situated here that we compete not only with Chicago and St. Louis but with Minneapolis and St. Paul on the north with our own people on the Missouri River. Competition is very keen and very sharp. There are a
1174 good many lines of goods that we would not change the price on if we had a reduction in the rate of freight. It would however enable us as a general proposition to meet the competition in towns like Minneapolis or St. Paul that had a lower freight rate, and that border on the same territory that we work. It would put us in a position where we could sell to our customers goods in competition with any other point that entered the same legitimate territory.

Q. You know do you of the difference in the rates in favor of

St. Paul and Minneapolis as against Omaha, St. Joe and Kansas City?

A. I understand that St. Paul and Minneapolis have an advantage of 32 or 33 cents per hundred weight first class.

Q. Would this reduction of rates then to a degree enable you to better come in competition in territory naturally tributary to Omaha, St. Joe and Kansas City, with Minneapolis and St. Paul?

A. Unquestionably.

Q. And in doing that, and in order to do that, you would be obliged to sell your goods to your customers at a less rate than you sell to them today?

A. It is hard to get down to a fixed point where you could put your finger upon a particular item that you would sell for less money. If it costs us less money in the way of trade to do business here than it costs in St. Paul and Minneapolis we would be in a position to meet competition from them when they invade our territory from 1175 the north, and the northwest, or where our territories are competitive. There is no question about that. That is if St. Paul goes into Iowa we go into Iowa, if St. Paul goes into the northwest we go into the northwest. If they have a freight rate that will make the aggregate cost of their goods less than the aggregate cost of ours unquestionably they have an advantage in competition over us.

Q. Do you know about what their profit would be over your profit under ordinary conditions, say on a business of five million dollars a year?

A. I have heard that it has been estimated or figured to be thirty five or forty thousand dollars a year. I have not made the figures myself. I have heard that those figures have been made by others.

Q. Under the present theory of rate making let me ask you whether the dry goods houses on the Missouri river can do any business to any considerable extent more than a hundred or about a hundred and fifty miles east of you?

A. They cannot.

Q. As conditions now exist have Chicago and St. Louis and other eastern cities a practical monopoly of this territory east of you?

A. So far as the Missouri River is concerned they have.

Q. Then you are obliged to look to the territory west of you for your customers?

1176 A. I would judge that seventy five, yes eighty per cent, of our business would lie west of us.

Cross-examination.

By Mr. McHUGH:

Q. You say you are familiar with the dry goods houses on the Missouri River?

A. Yes, sir.

Q. The growth of the dry goods houses on the Missouri river has been very pronounced has it not in the last fifteen years?

A. Yes, sir.

Q. They have doubled and prospered have they not?

A. Yes, sir.

Q. And been constantly extending their territory?

A. To the west yes.

Q. You say that the New York jobbers are not doing business in the Missouri river. Do you mean by that they do not have traveling men out west of the Missouri River soliciting business?

A. Yes, sir, that is where we get our information from principally.

Q. Do you say that the New York jobbers in dry goods do not sell to merchants in the Missouri river and west of it?

A. No, sir. They may sell some goods out there. I modified my statement that they may sell some large department stores out on the Missouri river.

Q. They do not keep traveling men out, but men may buy
1177 of them nevertheless?

A. Well, if they do it is in such a small way that it is hardly noticeable to the Missouri river jobber. I do not know of the accounts that the New York jobbers have personally but we do not hear of them in competition at all.

Q. You say you do not buy of the New York jobbers, you buy of the manufacturers?

A. Practically altogether.

Q. You say also that the growth of the business in the west has not been affected by the railroad rate situation?

A. No I do not say that entirely. I say this, that the growth of business on the Missouri River has been due to natural conditions, not on account of the railroad rate but in spite of it.

Q. You think the railroad rate situation has not had an effect in the building up of the business of the Missouri river?

The WITNESS: Do you mean for the Missouri river jobber?

Mr. McHUGH: Yes, sir.

A. I do not think the railroad rate has had an effect in building it up. I think it is natural conditions that have built it up, that is generally speaking.

Q. The railroad rate situation in the Missouri river has been one wherein the rates break at the Missouri river has it not?

A. I understand so.

1178 Q. You are sure of that aren't you?

A. Yes.

Q. There is no doubt about it is there?

A. Not that I know of. That is my understanding of it, yes, sir.

Q. Now you say that the system by which rates break at a town is not a system that affects and contributes to its development as a distributing center?

A. Well, I would say that the business on the Missouri River has been developed from the same causes and conditions that have existed wherever markets have been built up. That is on account of population, territory contiguous to it, and a demand for near by home supplies.

Q. Please pay attention to the question that I ask?

Q. I am speaking strictly of the dry goods business.

Q. Yes I know. Just repeat the question.

(The question was read.)

Q. What do you say as to that, Mr. Campbell?

A. Well, I would say that that would be one of the factors in building up a market.

Q. In Chicago and St. Louis—they are your competitors are they not, actively?

A. Yes and St. Paul and Minneapolis.

Q. You have others?

A. Yes.

Q. But there are competitors in Chicago and St. Louis?

A. Yes.

Q. If your competitors at Chicago and St. Louis could
1179 ship their goods to points west of the Missouri River at a through rate less than the sum of the rates from Chicago and St. Louis to the Missouri river, and the rates from the Missouri river west, would that not have an appreciable effect on the business done at the Missouri river?

The WITNESS: You mean effect on the Missouri river business?

Mr. McHUGH: Yes.

A. That would be owing to how much the difference was. If it was very slight it would not have any effect at all. If it was very large it might have some effect.

Q. But the effect whatever it would be would be an effect harmful to the Missouri river business?

A. Well, it would be to that extent, as to what the difference in rate was. If it was one cent per hundred weight I do not think it would have any effect. If it was a dollar a hundred weight it might have some effect.

Q. If the rate situation had an effect at all that effect whatever it was would be harmful to the Missouri river cities wouldn't it?

A. Yes, if it had any effect at all, but I still maintain that it would not have any effect at all, according to the difference in the rate.

Q. Now you say that this reduction of 9 cents a hundred is not enough to make any difference.

The WITNESS: With the New York jobber coming out here?

1180 Mr. McHUGH: Make any difference on the commercial conditions?

A. No, on a rate from a distance as far as New York to the Missouri river I do not believe that a 9 cent rate would have any effect on the markets of either Chicago, St. Louis or New York or any markets east of here.

Q. Would it have any appreciable effect on the situation at the Missouri River?

A. Well, that would depend largely upon where the rate was made and the conditions.

Q. You know the rate that we are talking about?

A. I understand by that question you mean if a similar rate was made west of us.

Q. No, you have said that this rate that was reduced in this case was not enough to make any difference—didn't you say that?

A. Yes, sir, I said I did not believe it would affect the jobbing of dry goods from New York in this territory a particle.

Q. You don't think it would have any effect on the commercial condition at Kansas City or St. Joe or Omaha?

Mr. ATWOOD: I object to that because it is putting in the witness' mouth what he did not say.

Mr. McHUGH: I ask him whether he said that or not.

The WITNESS: I don't understand you.

Q. Do you think that this reduction ordered in this case by the Commission will have, if it is made, an effect upon commercial conditions on the Missouri River?
1181

A. It will only have this effect, that it will enable us to compete successfully perhaps in some near by territory that is contiguous both to St. Joseph and other towns that are located similarly to St. Joseph. I take for instance St. Paul and Minneapolis.

Q. You do not think it would have any effect at all to benefit the Missouri River jobbers in their competition with Chicago and St. Louis jobbers?

A. It would have this effect, that we would save that much freight.

Q. Yes, it would have an effect that would benefit you as against your competitors in Chicago and St. Louis wouldn't it?

The WITNESS: You mean in competition?

Mr. McHUGH: Certainly.

A. Well, it would to a certain and limited extent.

Q. Not very much you think, not very appreciable?

A. It would be this, if you will let me state the case in my own way.

Q. No, I am——

Mr. ATWOOD: That is your privilege, to answer the question in your own way.

Mr. WEBSTER: If you have got an answer to make you have a right to make it, and you cannot be stopped in making your
1182 answer. If you have any more answer to make you can finish it.

Mr. McHUGH: That is right, only I want my question answered. You can answer it in your own way. I have a right to a direct answer. The question I asked you is this: do you mean to testify that if this order of the Commission in this case was enforced it would not give to the jobbers on the Missouri river an appreciable advantage in their competition with the jobbers at St. Louis and Chicago?

A. No, sir, I do not think it would. Now if you will let me explain that——

Mr. McHUGH: I am not asking you why.

Mr. ATWOOD: Go on.

Mr. WEBSTER: I insist you shall go on and make your explanation.

Mr. McHUGH: Go on.

A. I make that to apply for the same reason that I do not think the rate from New York city to St. Joseph would affect the competi-

tive relationship between the New York jobber and the Chicago jobber, and for the same reason I do not think it will affect the relationship existing today between the St. Joseph jobber and the Chicago jobber. That is as far as competition is concerned. It may affect their profits.

Q. Anything that swells your profits in a certain territory 1183 on sales you make in a certain territory, more than the profits of your Chicago and St. Louis competitor can make out of that same business in that same territory, is to that extent an advantage to you isn't it?

A. If it could be done yes. I do not think however that that is going to affect—well, it might affect our profit but it is not going to decrease the profit of the Chicago jobber. I have tried to make myself plain. I do not seem to be able to do it. It is this that in jobbing dry goods there are a great many elements that enter into the case and a good many elements that enter into the distribution of dry goods. The freight rate is not the only one. The freight rate is a part of the cost of the goods. The jobber in Chicago does not pay as much freight for the goods from the mill, and all the mills that make dry goods nearly are located in the east. His freight is less than ours. He is nearer the mills. Consequently if he sells his goods at the same price that we sell ours in the same territory he makes a larger profit than we do.

Q. Let us see, you buy of the manufacturer direct?

A. Yes.

Q. So does your Chicago competitor?

A. Yes, sir.

Q. What you buy of the manufacturers carries class rates?

A. Yes.

1184 Q. Now, then if they are hauled between the Mississippi River and the Missouri River, the same commodities from the same factories, for you, at less than they are hauled between the Mississippi river and the Missouri river for your Chicago and your St. Louis competitor, to that extent there is a lessening of the cost of that material for you as compared to them, delivered at the Missouri river, simply by virtue of that fact?

A. But they are not on the Missouri river. They are distributing from Chicago and they have a territory in addition to the territory that we work. Chicago can go into Ohio and Indiana and Illinois and down into Kentucky, and territory that we cannot reach, Michigan and Wisconsin and so forth, and we are eliminated entirely from that competition.

Q. I do not think you understood my question.

Mr. WEBSTER: Let him finish.

The WITNESS: Now they also enter a territory which under natural and market conditions rightfully belongs to the Missouri river, and they come out here and enter our territory, whereas we cannot enter theirs. The growth of population, the settlement of the country, has demanded markets on the Missouri river; not altogether on account of freight rates but largely on account of the time it takes to get the goods, and the closeness to the consumer.

Now we pay more freight for our goods than Chicago pays
 1185 for theirs. Dry goods are commodities that are not figured
 to the consumer on a laid down price, but they are figured
 on a price made in the store. Those prices are made in competi-
 tion with all who enter the same territory. A merchant in Kansas
 buying his goods in Chicago does not always look at the freight
 rate. He looks at the price. And therefore we have got to make
 a price out here, if we come into direct competition with Chicago
 in the final analysis to meet the conditions as they exist and to
 equalize them. Paying more freight as we do, only going a hun-
 dred to one hundred and fifty miles east of us cuts us entirely out
 of a large amount of territory that Chicago occupies today, leaving
 us only the territory west of us. And therefore that territory legiti-
 mately belongs to the Missouri river jobber as a distributing point.

Q. I want to ask you the question again, because I think your
 answer went way beyond the question. Taking this one thing only
 into consideration, you buy of the factories east, your competitor
 in Chicago buys of the factory in the east, now when you get those
 goods at the factory they have to be shipped between the Missis-
 sippi river and the Missouri river to get to your place of business.
 If the Chicago or St. Louis competitor sells out of his shipment
 to any point on the Missouri river, to any store keeper here, he has
 to get those goods and have them hauled between the Mis-
 1186 sissippi river and the Missouri river, doesn't he?

A. Yes.

Q. Now then narrowing the question right to this one point, if
 you can get those goods hauled from the Mississippi river to the
 Missouri river cheaper than the same amount of like merchandise is
 hauled from the Mississippi river to the Missouri river for your
 Chicago or St. Louis competitor that fact in and of itself and by itself
 means a saving to you as against him in that particular doesn't it?

A. Well, the cases are not alike. We are shipping here as a job-
 ber to be redistributed. He is distributing and shipping out to his
 retail customers. If he was on the Missouri river as a jobber and not
 shipping to a retailer then the conditions would be alike. There
 would be a difference in our favor. I do not consider the other way
 that there is. He has got a base of operation from Chicago, he ships
 his goods out there to his store houses and then he begins to dis-
 tribute those goods all over the country. We ship those goods to
 St. Joseph and that is our store house. He ships to the Missouri
 river and he is shipping to the customer.

Q. You think that is an answer to my question?

A. Well now I do not think that the cases are exactly alike.

Q. You think that is an answer to my question do you?

1187 A. Well, it is the only way I can answer it.

Q. All right, we will let it go at that. You say that this
 territory west of the Missouri river belongs to you?

A. Naturally so.

Q. Yes it belongs to you, and Chicago ought not to be allowed
 to compete on an equality with you out there?

A. No I did not say that sir.

Q. You think it belongs to you?

A. Natural conditions make it belong to us yes, like Illinois does to Chicago.

Q. You do business out in Colorado?

A. Yes, sir.

Q. Utah?

A. Yes, sir.

Q. You invade Denver's territory out there don't you?

A. Yes, sir.

Q. I suppose the Denver merchant thinks you are invading territory that belongs to him doesn't he?

A. Absolutely.

Q. The merchant's idea is that territory belongs to them and ought to be preserved to them, that is what the merchant naturally thinks?

A. That is the idea that the merchant has, yes, sir, to a certain extent.

Q. This reduction ordered by the Commission in this case, with which you are familiar, you said it would be a saving that could not be figured?

A. On dry goods, on each particular item.

Q. In other words it could not go into the price at which you would sell, you could not figure it out to the price at which
1188 you would sell?

A. Not on every particular item.

Q. Not each item but practically so far as this case is concerned the order would affect the profits of the merchants, and that is what it affects isn't it?

A. It does to a certain extent, and yet you can figure that in the price on certain items. You cannot on every particular item. I cannot add a price on a gross of buttons nor a spool of thread or something of that kind.

Q. Or on calico?

A. You could not on calico very well but you could do this, if you were competing with a market like St. Paul and Minneapolis or Chicago you could take certain items, not all of them but certain items, on which you could make a low price, and while all of the reduction would not stand on that particular item it would be distributed over the others throughout your entire stock.

Q. So that in competing with Chicago and making a price to compete with Chicago, which means trying to get business away from Chicago, the reduction effected by this order would enter into the price and affect thereby your competition?

A. Well, it could.

Redirect examination.

By Mr. WEBSTER:

1189 Q. With reference particularly to the Chicago merchant, you describe in a general way the territory over which the Chicago merchant, whom these railroads seem to repre-

sent under their present railroad ratemaking system, already enjoys practically an absolute monopoly in the dry goods business?

A. Well, I would say the state of Wisconsin, Michigan, Illinois, Indiana, part of Ohio and eastern Iowa, Eastern Missouri, northern part of the state of Missouri where we cannot go more than a hundred miles east.

Q. Do you know any moral reason why the railroads should be here insisting on extending the monopoly in favor of the Chicago merchant to your detriment or the detriment of your associates in the Missouri river cities?

A. I do not sir.

Recross-examination.

By Mr. McHUGH:

Q. You say that Chicago jobs in Indiana and in Ohio?

A. Yes, sir.

Q. And in Michigan?

A. Yes, sir.

Q. In other words goes hundreds of miles east in its business?

A. Yes.

Q. Denver does not go hundreds of miles east in its competition does it?

A. There is nothing hundreds of miles east of Denver except prairie lands. There are no towns out there.

1190 Q. No towns in Nebraska?

A. Not many of them a hundred miles east of Denver.

Q. Hundreds of miles east I say, Denver doesn't go east to compete?

A. No.

Q. You don't go east to compete when you get closer to St. Louis than you are to Kansas City you don't compete?

A. No, we do not go more than about 150 miles east of us.

Q. In other words in this situation out west here goods cannot be hauled through St. Louis to St. Joseph and then jobbed back towards St. Louis more than a hundred miles?

A. About a hundred to a hundred and fifty miles.

Q. But Chicago does go east?

A. I don't know how many hundreds of miles she goes. I know that Indiana a good deal of it is almost south of Chicago and I know that Illinois is all south of Chicago, and I know that Michigan and Wisconsin by the way the roads run is almost north of Chicago. Chicago enjoys a monopoly of that territory there. I say monopoly because it is the big market for that section of the country, just like this is the big market for this section of the country here.

Q. But are there any great dry goods houses in Indiana?

A. Yes there are some dry goods houses in southern Indiana.

Q. They sell to the south largely do they?

1191 A. Sell there yes, sir. They sell goods there some.

Q. They do not come out here?

A. No we do not find them out here.

Q. You do not find any dry goods houses from Cleveland out here?

A. No, sir.

Q. Nor from Cincinnati out here?

A. No, sir.

Q. In other words between Chicago and St. Louis on the west and New York on the east, in that intermediate territory there are no great dry goods houses doing business throughout the country as Chicago does?

A. Not in this section of the country, no, sir.

Q. Are you familiar with the rate situation or the theory of rate making that obtains between Chicago and New York?

A. I know that the rate from New York to Chicago is less than the rate from Chicago to St. Joseph as a part of a through rate. I know or have been informed, I won't say that I know, that the rate from New York to Chicago is less than it is from New York to some point between Chicago and New York say Cleveland, and then right on to Chicago.

Q. In other words between Chicago and St. Louis on the west and New York on the east a system of rate making obtains whereby the rate from New York to Chicago or to St. Louis is less than the rate from New York to Cleveland and from Cleveland to Chicago or St. Louis or the rate from New York to any of these intermediate cities and from that city on?

1192 A. Yes I understand that.

Q. So that a merchant at Toledo for instance a dry goods man in trying to do business in competition with Chicago would find that if he shipped into Toledo and then shipped west he would be shipping at a higher rate than the rate that obtained through from New York to Chicago, he could not get his goods for instance as far as Chicago as cheap as the Chicago merchant?

A. No he could not that is true. Now if you will let me answer some of these questions and cover them all in my own way I think I can give you all the information that you want from me in regard to this rate, as far as the dry goods business on the Missouri river is concerned. I do not believe that New York will sell one dollar more of dry goods in the west on account of the reduction of this rate. She may sell some goods out here for other reasons. She may have novelties in goods to offer that other markets have not got. She may create larger stocks that will give her an outlet into this country, but absolutely this reduction of 9 cents per hundred weight on a rate that is carrying \$1.48 will not permit New York to invade Chicago or St. Louis territory any more than it is doing today. That reduction will not do it. Now I do not believe that this reduction to the Missouri River for the same reason will affect the business of Chicago in this western country out here, provided Chicago continues to carry larger stocks of merchandise, more varied in their assortment, and can meet a demand that we cannot meet here. If we ourselves should grow to the size that our stocks would be as large as those in Chicago and the assortment as large we naturally would sell the goods out here that Chicago is selling

1193

today. The rate of 9 cents per hundred weight will not affect either New York in selling the goods she does today out here nor will it affect Chicago in this western country in my judgment. The people who buy goods in Chicago today are buying them largely in spite of any railroad rate or anything of that kind. There are elements that enter into this thing besides the railroad rates. That is not the only thing. If there was nothing else entering into it I would say that the rate would cut more figure than it does in this particular case, but the reason that the business of St. Joseph has grown, and that of Kansas City and Omaha, and the reason that the business as of Chicago has decreased in this western country, and it has, because three houses in Chicago have gone out of business, Stettauer Brothers, James H. Walker & Company and Mayer Brothers, is not on account of any freight rate but is on account of the growth and development of the dry goods business on the Missouri river. As our stocks grow larger and our assortments are larger we will attract to us the custom of this western country that

1194 I say belongs here for the reason that they can get their goods so much quicker, and provided they can find the assortments that they want at about competing prices they will buy their goods in the nearer market.

Q. Do you think that dry goods ought to be carried from St. Louis to Denver cheaper than they are carried from St. Louis to St. Joe and then from St. Joe to Denver?

A. Well, that would be owing to circumstances.

Q. Do you think it would make any difference in your trade if that order was made, in your profits?

A. That is owing to circumstances. You ask me if they should be carried there any cheaper. I do not know the conditions altogether surrounding Colorado. You are asking me however of the effect on the jobber aren't you.

Q. I am asking you whether you think that a reduction of the through rate from St. Louis to Denver on class goods making that rate lower than the local rate into St. Joe and from St. Joe out whereby the St. Louis jobber could get into Denver at a lower rate than the sum of the locals would affect injuriously your business or your profits?

A. It would depend entirely upon the amount of the reduction. If it was very slight it would not make any difference in the dry goods business. If it was very great it could make a difference. If it was very slight it would not make any difference.

1195 Q. Not in the profits?

A. No, sir, if it is very slight.

At this point a recess was taken until two o'clock P. M.

1196 The parties met at two o'clock P. M.

MAXWELL G. DAVIS, a witness produced, sworn and examined on behalf of the defendant intervenors deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. Give us your full name?

A. Maxwell G. Davis.

Q. Your residence?

A. St. Joseph.

Q. Your business?

A. Wholesale shoe business.

Q. What is the name of your firm or company?

A. Noyes Norman Shoe Company.

Q. Does your firm also engage in the manufacture of shoes as well as the jobbing business?

A. Yes, sir.

Q. How many years have you been engaged in that business in St. Joseph?

The WITNESS: The firm or myself?

Mr. WEBSTER: Both.

A. The firm was organized in 1861. I have been here thirty years.

Q. Do you know the boot and shoe houses in the city of St. Louis generally speaking?

A. Yes, sir.

Q. Do you know the Roberts Johnson Rand Company?

A. Roberts Johnson Shoe Company.

1197 Q. Of which Mr. Jackson Johnson was a member?

A. I think that is right.

Q. You know Mr. Johnson do you?

A. Yes, sir.

Q. Do you know the section of the country from which the hides generally come that are tanned into leather?

A. Yes, most of the hides are purchased in the west.

Q. You know do you of the large slaughtering house at Kansas City and St. Joseph and Omaha and Chicago?

A. Yes sir.

Q. State what the fact is as to whether or not there are large tanneries in the west, particularly in the state of Illinois around Chicago and in the state of Wisconsin in the vicinity of Milwaukee and the town of Racine?

A. Yes there are a great many tanneries in Wisconsin especially.

Q. What would you say from your knowledge of the tanneries as to whether or not the amount of leather produced by the tanneries in the middle west and in the west exceeds in proportion to that produced in the east the proportion of the population of the United States living in the western part of the country?

A. Yes, I should think it does.

Q. You may state whether or not it exceeds as to the proportion of shoes worn by the people living in the same territory?

A. Yes, sir.

1198 Q. You may state if you happen to know the fact whether or not the boot and shoe manufacturers in New England or the east have occasion to go to the tanneries of the west for the purchase of any part of their raw material used in the manufacture of boots and shoes, such as leather?

A. Yes, sir, a great deal of western leather is used by the New England shoe factories.

Q. Coming next to the city of St. Louis I want to ask you from your knowledge of the boot and shoe trade where is the chief competition that a house like the Roberts Johnson Rand Company has in its line of business?

A. Chicago.

Q. How is it as to whether or not it has competition from other houses in the city of St. Louis?

A. Roberts Johnson & Rand would have more competition in St. Louis than in Chicago. I understood that you referred to houses outside of St. Louis.

Q. I did. You answered properly. From your knowledge of the boot and shoe trade in St. Louis what would you say as to whether or not the St. Louis firm whose name you mentioned has any serious competition coming from any of the New England factories or shops, or whether in other words their chief concern is their competitors in their own city of St. Louis or in Chicago?

A. The chief competition would be with western houses.

1199 Q. From your knowledge of the boot and shoe business what would be your opinion as to whether the reduction of rates as ordered by the Interstate Commerce Commission, being 9 cents on first class and in a reduced ratio including the first classes would in any important way interfere at all with the business of the St. Louis houses in their business in the Missouri river territory?

A. I do not believe that it would interfere with their business in any way.

Q. Have you taken the pains to make a calculation based upon your own business for some time past, to ascertain the difference in cost per hundred pounds or per value of shoes per hundred pounds if this reduction should go into effect?

A. I have.

Q. And that computation has been based on your actual purchases from other houses has it?

A. More exactly speaking I would say on our actual receipts for a period of time.

Q. What is about the average value of a hundred pounds of shoes?

A. The class of shoes handled by jobbers would strike in the vicinity of \$50.

Q. What would be the diminution in cost by way of percentage or otherwise per hundred weight of shoes based on the valuation of \$50 per hundred weight, if the new rate went into effect, making the computation on first class that is 9 cents?

1200 A. About one sixth of one per cent.

Q. That would be how much on each pair of shoes?

A. My figures are about the same fraction, about one sixth of a cent a pair according to my computations.

Q. That would be then equivalent simply to one cent on six pairs of shoes all told?

A. Yes, sir.

Q. As a jobber and a merchant what would you say as to whether or not that would interfere with a firm in St. Louis in actual experience in the sale of goods in this Missouri river territory?

A. I do not think it would be considered in a single instance.

Q. What would you say as to whether the retail dealer who purchased shoes would take such a mere nominal matter as that into account in making a purchase?

A. I think it is underasonable to suppose that he would. I have never seen a case where they did it.

Q. Would you think the man who went into a store to buy a pair of shoes would stop and haggle over the price on one sixth of one cent on a pair of shoes?

A. I never knew a case of that kind.

Cross-examination.

By McHUGH:

Q. What proportion of the leather used by the New Eng-
1201 land shoe manufacturers comes from the west?

A. I could not do more than to make an estimate of that, and I am afraid it would not be sufficiently accurate to have much value here.

Q. Then we will let that go. You say that chief competition of the St. Louis shoe concern is with western houses?

A. Yes, sir.

Q. You are one of the western houses that compete with them?

A. Yes, sir.

Q. Where do you get the shoes that you buy?

A. The shoes we buy are made in New England and some of them further west.

Q. You get quite a proportion of your shoes that you job, from New England?

A. Yes, we get a good many shoes from New England.

Q. So that with respect to the shoes that you get from New England and job as a competitor of the St. Louis house, the St. Louis house finds itself in competition with shoes made and shipped from New England?

A. Yes, sir.

Q. This reduction in freight is infinitesimal as it affects St. Louis you say, inconsequential?

A. I am not quite sure that I understood your question.

Q. This reduction that the Commission ordered in rates you say is so small that it is inconsequential in its effect on the St.

1202 Louis jobber?

A. I should think so.

Q. Of course if that is so it is inconsequential in its benefit to you as a competitor of the St. Louis man?

A. It is a small amount but if it is ours and not the railroads we want it.

Q. I am not asking whose it is, but you say it is inconsequential as a damage to your competitor.

Q. Now I ask you is it inconsequential as an advantage to you?

A. I do not think the cases are parallel.

Q. I would like an answer to my question. Do you think that this reduction ordered by the Commission would be such a reduction as would be inconsequential in its advantage to you in your competition with St. Louis houses?

A. No, sir, we would like to have it.

Q. You think it would be a substantial benefit to you as a competitor of the St. Louis house?

A. The word substantial represents rather an unknown quantity.

Q. I am not playing on words. Isn't it true and must it not of necessity be true that it is just the same degree of advantage to you as a competitor of the St. Louis house as it is a disadvantage to him?

A. No, sir.

Q. You don't think that is true?

A. I don't think it is.

Q. You think it is more of an advantage to you than it is
1203 a detriment to him?

A. Yes, sir.

Q. When you speak of its not affecting its business you mean sales, his sales, would not be affected by it?

A. I had sales in mind in answering your question.

Q. And Mr. Webster's questions?

A. His profits. I do not think it would affect his prices in any way or his profits.

Q. You don't think it would affect his profits any?

A. No, sir.

Q. Do you think if this does not affect him in any way that it would affect the business relationship and the competition in business if this reduction that has been ordered between the rivers in favor of shipments to the Missouri river were so ordered that the Chicago and St. Louis house could get the benefit of it, do you think that would affect in any way the commercial relationship differently from the way it is made now?

A. You mean that if this reduction should apply in the same proportion to St. Louis that it does to St. Joseph, is that the idea?

Q. You understand this order. This reduction is made between the rivers only when the boots and shoes, in your case, come from the Atlantic seaboard?

A. Yes, sir.

1204 Q. Suppose the order was made that all boots and shoes from anywhere east of the Mississippi river, including St. Louis and Chicago, the reduction should apply to those shipments, would that affect the commercial conditions in this section of the country and differently from the present order, which is limited, as you know?

A. That would leave the same injustice in favor of St. Louis.

Q. Then you think that an order that would extend this reduction to all boots and shoes carried by the railroads between the Mississippi river and the Missouri river, would affect the commercial situation in this section differently from the reduction as at present ordered, which applies only in favor of boots and shoes from the Atlantic seaboard? I am not asking whether it is just or unjust. I am merely asking whether there would be a difference between the two orders in the effect upon the commercial situation in this section of the United States.

The WITNESS: What do you mean by commercial situation? Let me understand that aright.

Q. In its effect upon the business men and the business done in this central section of the country, including Chicago, St. Louis and Missouri river cities?

A. Such a reduction would relieve all the wholesalers on the Missouri river of a part of the burden they now have.

1205 Q. All of them, including Chicago and St. Louis?

A. Yes, sir.

Q. As it stands now it only relieves the wholesalers on the Missouri river, that is the fact isn't it?

A. I believe you do not mean that for a question. That is the avowed purpose of the bill isn't it?

Q. The avowed purpose of the order, and I am simply getting the fact in here, there is no doubt about that fact is there?

A. I don't see any.

Q. So that the present order relieves the wholesalers on the Missouri river of part of their present burden?

A. Yes, sir.

Q. And does not relieve the wholesalers at Chicago and St. Louis from a like part of their freight burden?

A. They haven't got a like freight burden.

Q. They pay the freight between the rivers?

A. They pay what they are charged.

Q. And they pay 60 cents on first class between the rivers don't they?

A. The Missouri river jobbers do.

Q. So do St. Louis?

A. No, sir.

Q. St. Louis does not pay 60 cents from St. Louis to St. Joseph?

A. No, sir.

Q. On first class?

A. I never heard of them doing so.

Q. If you never heard of them doing it that is the end of it. Suppose they did, suppose it is a fact, assume that the St.

1206 Louis jobbers pay the same rate exactly between the Mississippi river and the Missouri river that the Missouri river jobbers pay, now on that assumption, if that were true, then this order would relieve the Missouri river jobber of a part of the freight burden, but would not relieve the St. Louis or Chicago jobber of that same part of that same freight burden would it?

A. I don't see that there is any ground for the assumption.

Q. But if that were true it would follow absolutely wouldn't it? Is there any doubt about it?

A. It would seem to follow but still——

Redirect examination.

By Mr. WEBSTER:

Q. In view of your cross examination I want to ask you to carry out a matter or two that you were not permitted to carry out. You began to say once that—you spoke of the injustice of the present existing rate in favor of St. Louis, or conditions of rates. Please now state wherein there exists this injustice in favor of St. Louis as against you people?

A. (No answer.)

Q. I will put another so that you may perhaps answer it all at once. In answer to another question you began to state that the conditions were not parallel, and then another question was
1207 put to you and you did not answer. You may explain what you had in mind when you spoke of this present existing injustice in favor of St. Louis as against St. Joseph, and wherein the conditions are not parallel.

A. It is certainly unjust to charge 80 cents from Chicago to the river and 68 cents from Boston to Chicago.

Q. You mean by that that under the present railroad system of making railroad tariffs cities like Chicago and St. Louis enjoy a rate much less than the rate which is charged to you people from Chicago and St. Louis west for a similar haul but for a much less distance?

A. Yes, sir.

Q. The boot and shoe manufacturers in either Chicago or St. Louis get the benefit of that reduced tariff rate on their raw material from the place or source of supply to the place of their factories either in Chicago or St. Louis, and the same thing would apply of course to the transportation of the raw material to the factory if it should be in New England?

A. Yes, sir.

Q. But in your factory located on the Missouri river if you get your supplies or your raw material from the source of supply you pay the higher railroad rate?

A. And discriminatory classification.

Q. Both?

A. Yes.

Q. And that discrimination in rate making that you now
1208 speak of has existed practically ever since you have been in business on the Missouri river I take it?

A. In published tariffs it has.

Recross-examination.

By Mr. McHUGH:

Q. Where do you get the leather that you use in manufacturing boots and shoes?

A. It comes from a good many sources.

Q. Do you get some from New England?

A. Some comes from New England, and some from abroad.

Q. And some from the west?

A. The greater part of it from the west.

Q. What states?

A. Wisconsin produces a great deal of it, Illinois some, and the part that is produced in the west is the heavy part.

Q. Take Wisconsin, that is where the most of it comes from that comes from the west?

A. Yes, sir.

Q. What is the rate from the Wisconsin tanneries to St. Joseph?

A. The Wisconsin tanneries make a rate of 80 cents.

Q. To St. Joseph?

A. To St. Joseph. The same as Chicago.

Q. What is the rate of leather from these Wisconsin tanneries to St. Louis?

A. I am not acquainted with the rate right now.

1209 Q. So you don't know.

A. No.

Q. When you make shoes from Wisconsin leather and the St. Louis man makes shoes from Wisconsin leather then you think the St. Louis man can ship his shoes to the Missouri river cheaper than you ship your leather do you?

A. The tanneries have warehouses in St. Louis and carry stocks there to supply St. Louis trade.

Q. But the freight rate is in the leather isn't it?

A. I presume it is figured in on some sort of a basis.

1210 J. A. WARNER, a witness produced, sworn and examined on the part of the defendant intervenors deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. Give us your name?

A. J. A. Warner.

Q. Where do you reside?

A. St. Joseph.

Q. What is your business?

A. I am Secretary of the Wyeth Hardware Manufacturing Company.

Q. How long has that company been in the hardware business?

A. Fifty years this year.

Q. Do you know the Simmons Manufacturing Company of St. Louis?

A. Yes, sir, quite well.

Q. Are you familiar with the business that is carried on and conducted by the Simmons Hardware Company?

A. Yes, sir, to some extent.

Q. Have been for about how many years?

A. Twenty five years.

Q. You may state from where come the principal commodities handled by hardware houses located on the Missouri river?

A. The bulk of it comes from the territory lying between Pittsburg and Chicago, Cleveland and the iron centers.

Q. Does any portion of the goods handled by a western hardware house come from the seaboard territory, and if so how
1211 would you class the goods?

A. Light or shelf hardware as we term it and cutlery is made in the New England states.

Q. That represents about what percentage of the business that is carried on by a hardware house in this country?

A. I should say approximately a little over 25 per cent.

Q. You may state what are the rates which are taken by the heavy articles which are handled by hardware houses, I mean whether they take what are known as class rates or whether they take what may be termed commodity rates?

A. They take class rates principally, low class rates, fifth class. There are some commodities, built I believe a majority of them take the class rates.

Q. As to shelf goods which may come from eastern factories what rate do they take?

A. They take class rates.

Q. Do you know what class they take under the eastern classification east of Chicago and St. Louis?

A. Hardware which I suppose would be the bulk of it takes third class under the eastern classification.

Q. Do you know what it takes under the western classification?

A. Second class.

Q. If you know you may state about what the freight on shelf goods coming from New England factories represent in percentage as to the cost or value of that kind of merchandise?

1212 A. Well, I presume it would not be much over five per cent, five to seven and a half.

Q. And the reduction on second class west of the river, as ordered by the Commission I believe is seven cents per hundred pounds. If then the present freight charge from the seaboard territory to the river represents about five per cent of the cost a reduction of seven cents second class would be about one twentieth of the five per cent or a reduction of less than one quarter of one per cent would it not?

A. I guess that is about the way to figure it.

Q. You may state whether in your opinion such a reduction if enforced would materially interfere in any way with the business of the Simmons Hardware Company carried on in this western country?

A. I should not think so. It would be so very small that it would really not affect our selling prices enough to be taken into consideration.

Q. Is it not true or is it true that the Simmons Hardware Company have houses located in this western country, for instance at Sioux City, have they a house there?

A. Yes, sir.

Q. Have they a house at Wichita Kansas?

A. Yes, sir.

Q. Have they a house at Minneapolis?

A. Yes, sir.

Q. Do you know of any reason why the Simmons Hardware Company in the transportation of all commodities which
1213 come from New England, to wit, all shelf goods, which would be distributed in this country, the Missouri river valley, the southwestern country from Kansas city or the northwest from Minneapolis would not have the benefit of this reduction the same as Missouri river houses?

A. As I understand it they will have the same benefit that we will have for their branch houses.

Q. And these branch houses you speak of are used as distributing points are they not for their trade in the northwest and in the middle west and in the southwest?

A. Yes.

Q. Under existing freight rate conditions as established and enforced by the railway companies you may state whether it is practicable for a hardware house on the Missouri river to do any considerable business at a point beyond a hundred or one hundred and fifty miles east of where you are located?

A. About a hundred miles is as far east as we can go.

Q. What is the fact as to whether or not, under present freight rate conditions, Chicago and St. Louis do not have a monopoly of the territory surrounding them and the states surrounding the location of the said two named cities?

A. So far as Missouri river houses are concerned that is a fact.

Q. Do you know of any moral or good business reason
1213½ why railroads should so fix railroad rates as to allow these two cities, which enjoy a monopoly in their own territory and in their own surrounding states to have any extended privileges in the territory west of the Missouri river or in your locality?

A. I do not know of any.

Q. In other words you have got the same right to your locality you think that Chicago has to hers or St. Louis has to hers?

A. Yes, sir.

Q. You may state whether there are any hardware jobbing houses in New York at this time that do any business or any considerable business in this western country?

A. No, sir, there are none.

Q. Have there been any for a long period of years?

A. It has been a good many years.

Q. What is the fact as to whether the New York jobbing houses in hardware do any considerable business anywhere west of the city of New York or Pennsylvania or west of the Allegheny mountains?

A. I think not. Not to my knowledge.

Q. The same reasons then under freight rate conditions which forbid the jobbing of heavy hardware east and then selling it in the west, by an eastern house prevents you from getting heavy hard-

ware from Pittsburg and Cleveland the places of manufacture and then shipping it to any customers back east?

A. Yes.

1214 Q. You cannot do that?

A. No.

Cross-examination.

By Mr. McHUGH:

Q. The Wyeth Hardware Manufacturing Company is a jobber in hardware of all kinds?

A. Yes, sir.

Q. Covering the territory west, northwest and southwest of St. Joseph?

A. Yes, sir.

Q. Doing business in that territory in competition with the Simmons Hardware Company for instance at St. Louis?

A. Yes, sir.

Q. Buying about 25 per cent of your products in the Atlantic seaboard territory?

A. Approximately, yes, sir.

Q. The balance practically bought in the iron territory, Pittsburg, Cleveland and thereabouts?

A. Yes, sir.

Q. That is also true of the Simmons Hardware Company of St. Louis?

A. Yes, sir, I should judge so.

Q. The Simmons Hardware Company buying their hardware at Pittsburg or Cleveland or any of this territory, or in the Atlantic seaboard, ships that hardware to St. Louis and pays the same rate to get it to the Missouri river that you pay when you buy it and ship it to the Missouri River?

A. Yes, sir.

Q. Then you ship it from the Mississippi River to the
1215 Missouri river here?

A. Yes, sir.

Q. And the Simmons Hardware Company in shipping to the Missouri river to any customer pays the same rate between the rivers that you pay?

A. Yes, sir.

Q. If this order of the Commission goes into effect the result will be that you and the Simmons Hardware Company will pay the same rate on your merchandise from the place where you buy it to the Mississippi river, and then you will ship it to the Missouri river at a lower rate than the Simmons Hardware Company can ship it to the Missouri river?

A. I do not know how those rates are divided. The through rate though to the Missouri river will be less than the sum of the locals on St. Louis, if that is what you mean.

Q. So that you, if the order of the Commission should be enforced, would get your merchandise delivered to you at the Missouri river

at a less freight charge than the Simmons Hardware Company could get that same merchandise to the Mississippi river and ship it to the Missouri river?

A. If they wanted to distribute it from St. Louis yes, sir. They could ship it through at the same rate that we could.

Q. If they established a warehouse and shipped it through at the rate that you get that would compel them to divide their business and establish a warehouse and an agency here instead of doing that same business at St. Louis?

A. They have already done that.

Q. They have a branch house here in St. Joe?

A. They have on the Missouri river.

Q. At Sioux City?

A. Yes, sir.

Q. As it stands today the branch house at Sioux City pays the same rate that the other people do, the jobbers on the Missouri river?

A. Yes, sir.

Q. So there is nothing in the freight rate situation, so far as it affects the shipment from the east, that compels the maintaining of that house at Sioux City, that is just a matter of convenience for them?

A. I am not prepared to say as to that. I would imagine that there was a necessity for it or they would not have it.

Q. Yes, a business convenience or they would not have it?

A. Yes.

Q. But as it stands today they could ship from their St. Louis house, so far as mere freight rates are concerned, to Sioux City and beyond at the same rate that they now ship it into Sioux City and then further on couldn't they, under the present rate adjustment?

A. Of course in shipping from St. Louis they have to pay the local freight out.

Q. The local freight from St. Louis to Sioux City is just the same as the freight from St. Louis to St. Joe?

A. The jobber at Sioux City would get his stuff in the cars.

Q. That is an advantage that the jobber at the Missouri River has?

A. Yes, sir.

Q. Don't you think that a change from the present situation by which the Simmons Hardware Company can get hardware at the same places you do and ship it into St. Louis at the same rate you pay and then deliver it to the Missouri river at the same rate you pay, don't you think that a change from that situation to one whereby they would have to pay more than you if the freight took the same course, is a detriment to the Simmons Hardware Company?

A. It would be to some extent I suppose on a very small portion of their tonnage.

Q. To the extent of the reduction of freight it would be a detriment to them?

A. Yes, sir.

Q. It would be a detriment to them just to the extent that it would be a benefit to you?

A. Well, it would—I do not know that it would be especially a detriment. As I said before I do not think the change would be sufficient to make any change in the selling prices of the articles.

Q. No, I do not mean selling price, but it would affect their profits?

A. They would pay a higher rate on stuff that they brought to St. Louis and reshipped to this territory than we would.

Q. The difference would be their loss that they would have to pocket wouldn't it?

A. Well, yes, if you put it that way.

Q. It would measure the advantages you would have over them too, wouldn't it?

A. I presume so.

Q. You say you cannot do business more than a hundred miles east of St. Joe?

A. About a hundred miles.

Q. And you cannot see any legal or business reason why you should not go further east?

The WITNESS: Cannot see what?

Q. Any moral or legal reason why you should not be allowed to do business as further east?

A. I don't think I said that.

Q. I understood that?

A. The conditions would be such that we could not hope to do it.

Q. You know of course that the railroads could not make a lower rate from St. Louis to St. Joseph than they made to cities that were between, east of St. Joseph, between St. Joseph and St. Louis, on the same line of railroad?

A. No, I do not.

Q. You do not know that they cannot charge more for the short haul than the long haul?

A. No I do not. I have understood that the Pacific coast rates are much lower than rates inland.

1219 Q. That is true by virtue of a condition. Any business that you do east of St. Joseph involves the hauling of the material to St. Joseph through that territory east and then a re-shipment back from St. Joseph to that territory?

A. Yes, sir.

Q. And of course in order to ship east of St. Joseph for this hundred miles that you do ship you have to shrink your profits to that extent?

A. Yes, sir.

Q. So that while you say the freight rate does not destroy your business the situation is such that while you have an added freight rate to pay over a competitor that shrinks your profits by just the amount you have to pay?

A. Yes, sir.

Q. That would be true of the St. Louis house with respect to this

order so far as this made them pay more freight to get the commodity from the source of supplies through their house to the point of delivery, just to the extent that it made them pay more than you their competitor paid they would have to shrink their profits to meet your price?

A. Yes, sir.

Q. You have a competitor in Salina Kansas haven't you?

A. Yes, sir.

Q. What is the name of that house?

A. Lee Hardware Company.

Q. They do quite a business?

A. Yes, sir.

1220 Q. The rates that they pay are the rates to St. Joseph plus the rate from St. Joseph to Salina?

A. I believe it is the sum of the locals. I am not familiar with that.

Q. So that this competitor of yours at Salina gets his goods delivered to him there from the place where he purchases at the same rate that you pay on goods coming from the same place, from your warehouse to Salina?

A. Yes, sir.

Q. If this man should get an order that would fix the rates from the Mississippi River into Salina at less than the sum of the locals by way of St. Joseph, he would have an advantage over you as his competitor in just the extent of that difference in rates wouldn't he?

A. He certainly would.

Q. Do you think he ought to have it?

A. I think he ought to have it if he can get it.

Q. Just a question of whether he can get it or not?

A. Yes.

Q. That is the only basis of measuring the right and wrong of it?

A. No, I do not think that, but I think a man is entitled to all he can get from the railroads.

Redirect examination.

By Mr. WEBSTER:

Q. You recognize the right of the man at Salina to live and be prosperous if he can?

A. Certainly.

1221 Q. Do you not recognize the right of cities on the Missouri river to be treated by the railroads in a way that they can live and be prosperous just as well as Chicago?

A. I certainly do. I think we have gotten less out of the railroads than any other jobbing center that distributes the amount of goods that we do.

Q. Do you know any reason moral or otherwise why the railroads should fix rates to help St. Louis and Chicago and not grant equal privileges and advantages to these cities on the Missouri river?

A. I do not know of any.

Q. You do know do you not that this western part of the country

has been growing in population in a ratio much greater than the eastern part of the country during the last fifty years?

A. I should imagine so. I do not know the figures.

Q. Furthermore in the business world is there not a recognized rule that when people come into a community and build it up they are entitled to have houses of distribution convenient to supply them with the needs of life?

A. Yes, sir.

Q. Do you know any good reason, moral or otherwise, why this western country should be made dependent upon Chicago or St. Louis for the accommodation of railroad traffic men in the adjustment of rates?

1222 A. I cannot say that I do.

Recross-examination.

By Mr. McHUGH:

Q. The jobbing interests on the Missouri river have waxed prosperous in late years haven't they?

A. Mr. Boyd seemed to think so when he saw our building going up down there this morning.

Q. It is a fact isn't it?

A. Oh yes.

Q. The jobbing interests of the Missouri river have grown very very rapidly in the last ten or twenty years?

A. Yes.

Q. Isn't it true that the jobbing interests of the Missouri river have grown in a measure, not entirely, but in a measure because they could ship in and ship out as cheaply as the larger cities to the east could ship through?

A. I think that is the reason for it. I do not believe they could have existed under any other condition.

Q. That is a system that is essential to the maintenance and development of distributing centers?

A. Yes, sir.

Q. That is the system that has maintained on the Missouri river all the time that you have been in business?

A. Yes, sir.

1223 Q. And in connection with that, in your business you can get your merchandise delivered to you at your place of business for exactly the same freight cost that the competitor in the larger cities of Chicago and St. Louis can deliver them in St. Joseph?

A. Yes, sir.

Mr. WEBSTER: That is always providing the goods come from the eastern country and it is not at all true if they come from the west?

A. I do not know that I quite understand that.

Mr. McHUGH: He has testified where the goods came from.

Mr. WEBSTER: You questioned him on a general proposition, not with reference to this particular case. Isn't it true that these same railway traffic men, in fixing and adjusting railroad rates, will permit staple articles or commodities to come from the Pacific coast and

carry them clear to Chicago or St. Louis at the same price as to Omaha, St. Joe and Kansas City?

A. I believe so.

Q. If they come from the east they won't do that same thing at all will they?

A. No, sir.

Mr. McHUGH: They charge in this Pacific coast business as much to Denver as they do to the Missouri river?

A. Yes, sir.

An adjournment was here taken until Thursday April 15th, 1909 to meet in New York City.

1224 On April 15th, 1909, the parties met pursuant to agreement at Room 203 Number 43 Leonard Street in the City of New York and State of New York.

Present, Mr. Webster and Mr. Fyffe.

JOHN H. HILLMAN, a witness on the part of the defendant intervenors was duly sworn and deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. John H. Hillman.

Q. Your place of business.

A. I live in Brooklyn, a section of Greater New York.

Q. What is your business?

A. I am superintendent of H. B. Claffin & Company's traffic department.

Q. H. B. Claffin & Company is engaged in what line of business?

A. Jobbing, dry goods, notions, rugs.

Q. Their place of business is located where?

A. In New York City.

Q. How long have you been connected with the house of H. B. Claffin & Company?

A. Since 1872.

Q. In a general way are you familiar with the business done by that company?

A. Yes, sir.

1225 Q. In a general way are you likewise familiar with the other dry goods houses that have their places of business in New York City.

A. Yes, sir.

Q. Are you familiar in a general way with the dry goods houses which have been established in the western country during the last I will say twenty years?

A. Yes, sir.

Q. Do you know of the dry goods jobbing houses which have been established particularly up and down the Missouri river and such cities as Omaha, St. Joseph and Kansas City?

A. I do not know as I could name them particularly now but I have a general knowledge of them.

Q. You may state what your knowledge is on the point whether or not there is an advantage to the dry goods jobber in buying near the point of distribution or near where his customers or patrons are as a general proposition?

A. There certainly is an advantage.

Q. State whether from your general knowledge and observation the fact of the development of the western country in population and wealth has had a tendency to circumscribe or limit the territory within which eastern dry goods houses have been doing their business?

A. It certainly has had a very marked effect.

Q. During the last ten or twenty years and since the establishment of dry goods houses in Chicago and St. Louis and in the Missouri River territory what is the fact as to whether or not certain
1226 of the dry goods jobbing houses in New York City have gone out of business?

A. They have.

Q. Can you give the names of some houses that have gone out of business?

A. The most notable ones are Bates, Read & Cooley, E. S. Jaffray & Company, Sweetzer, Pembroke & Company, Hilton Hughes & Company who were successors to A. T. Stewart.

Q. I wish next to call your attention to the dry goods jobbing houses in the City of Philadelphia and ask you what the facts are, if you know, as to whether the houses in Philadelphia do any extensive dry goods business if any at all west of Chicago or St. Louis?

A. I am not positive about that, but from my knowledge of the houses, of which I think there are only two that amount to anything, I hardly believe they do any business in that territory. I would not want to be put on record as saying absolutely that they do not but if they do any it is very small.

Q. Are you familiar with the amount of reduction on the freight rates from the Atlantic seaboard to the Missouri river which have lately been ordered by the Interstate Commerce Commission, involved in this suit, to wit, nine cents on the first class, seven cents on the
1227 second class, five cents on the third class, four cents on the fourth class and three cents on the fifth class?

A. I read of such action being taken but to tell the truth I paid very little attention to it at the time. Unless I was told I could not recall the figures.

Q. Conceding my statement of the reduction to be correct on through shipments from the Atlantic seaboard to the Missouri river I wish to ask you whether in your opinion that limited reduction will in anywise materially affect or enlarge the territory within which a jobbing house in New York City might do or extend its business, and whether such reduction would enable New York houses to increase their business or the area of their territory to the detriment of such a house as Marshall Field & Company, which I name as an illustration?

A. I do not think it would have the slightest effect.

Q. You may state in a general way your reasons for that opinion?

A. That reduction would be so small that a man could not figure it in the price of his goods. The average value I think of a case of goods, which is a general term, I should say is about \$130. Such a case would not exceed in weight probably two hundred or two hundred and fifty pounds. That would practically mean on a reduction of nine cents a hundred, about 18 cents. It would be a very hard matter for a man to figure that out and add it to the
1228 cost of the goods. The same thing would apply to a man who bought a case of American print say at 5 cents a yard. It weighs about 425 pounds. The value of a case of that kind is about \$125. There are twenty five hundred yards. The difference would be about seven cents a hundred on second class. It would be about 28 cents to be figured on the cost of 2500 yards of goods. It would be so small as to be lost sight of. The only effect would be a probable moral effect. A large shipper might say I can save so much in the course of a year on a thousand cases of goods, if he handled that many. It would not in my opinion and in the opinion of men that have traveled for us—

Mr. FYFFE: I object to his statement of the opinion of others except the witness' opinion.

Mr. WEBSTER: I desire furthermore to call your attention to a statement made by Mr. Crosby, the Freight Traffic Manager of the Chicago Burlington & Quincy Railroad Company, to the effect that the reduction of the rate on business from the seaboard to the Missouri river, would have a tendency to transfer the business from the interior of the country to the Atlantic seaboard, and ask you whether or not in your opinion this reduction mentioned in the previous question would have the effect of transferring the commercial business from the city of Chicago to New York city or to the Atlantic seaboard?

1229 A. I do not think so.

Q. I desire to call your attention to a statement made by Frank P. Eyman first assistant General Freight Agent of the Chicago & Northwestern Railway Company, to the effect that the said reduction if carried out to its logical conclusion would be disastrous to the commercial business of Chicago and St. Louis and it would be a very serious handicap to the business of that section of the country, and ask you whether in your opinion such results would follow the putting into force of these reduced rates as mentioned in my previous question?

A. I cannot possibly see it in that light.

Q. In other words if these reduced rates that have been spoken about should be put into effect by the railroads on traffic originating on the Atlantic seaboard and destined to the Missouri river, state whether or not in your opinion that would be detrimental and disastrous to the business of either Chicago or St. Louis?

A. Well, for the same reason as stated in the previous answer, the change is so slight that I cannot see where any disaster could befall the two towns mentioned from such a small reduction.

1230 Cross-examination.

By Mr. FYFFE:

Q. How long have you been connected with the traffic department of Lafin & Company?

A. Since the 2nd of January 1881.

Q. During that time has Clafin & Company had any business to speak of in selling to the Missouri River points?

A. Yes.

Q. The Missouri river cities I think they are called?

A. Yes, sir.

Q. Does it have business of that character today?

A. Some, yes.

Q. Not as much as it did have?

A. No sir.

Q. Has it been a gradually decreasing business?

A. Yes, sir.

Q. From whom do the Missouri river cities buy goods of the character that your house deals in?

A. I could not answer that question, I do not know.

Q. Do you know whether they deal in goods of that character at the Missouri River points?

A. I presume they still do so.

Q. There is no doubt is there that in the kind of goods in which your house deals, which I think you said were dry goods in general and rugs and carpets and so on?

A. Yes.

1231 Q. There is no doubt is there that the Missouri river cities, namely St. Joseph, Kansas City, Omaha and Sioux City deal in goods of that character and sell them in the adjoining territory?

A. I guess there is no question about it.

Q. Do you know where they get their goods?

A. I haven't the slightest idea.

Q. Have you any idea whether they buy them from manufacturers in Chicago and manufacturers in Liverpool?

A. I assume that like ourselves they sell a good many goods of domestic manufacture.

Q. Where would they buy those goods of domestic manufacture?

A. If they dealt in the same lines of goods that we do they would have to buy them where we buy them, from the mills.

Q. These mills are situated where?

A. Of the finer goods, in the east.

Q. Do you mean New England particularly?

A. New England particularly. Cotton goods the cheaper grades, unbleached, from the south.

Q. Your principal sales not being to the middle west or Missouri river points are I suppose to jobbers or houses, consumers I should say perhaps, in the eastern section of the country, isn't that so?

A. It is east and south largely. Our trade lies largely in 1232 the south.

Q. Where would you say the western limit of your business is?

A. Well, that would be a pretty hard matter to state. Going back twenty years we shipped in proportion to our general business a very much larger volume in the west and northwest than we do today.

Q. Is that true of your sales at Chicago and St. Louis?

A. Yes.

Q. St. Louis and other Mississippi River points?

A. Yes, sir.

Q. Quincy Illinois?

A. Yes.

Q. Peoria Illinois?

A. Yes.

Q. Is that true with regard to your sales at Cleveland or Toledo or Detroit?

A. No, sir, we still hold our ground there fairly well.

Q. The Chicago and St. Louis people I suppose get their goods from the same quarter that the Missouri river cities get theirs, that is from the eastern manufacturers?

A. I should presume so yes, sir. It is standard lines of goods.

Q. That is the same source that supplies you?

A. Yes, sir.

Q. They get the goods from these parties, if they do get them from them, in the same way, the finished article is sent from the manufacturer direct to the jobber, whether it is to Claflin & Company in New York or to A. B. & Company at Kansas City?

A. That is right.

Q. You are aware that on goods of that character, the first five classes, the rate from the seaboard to the Missouri river cities has been reduced 15 per cent, or 9 cents per hundred pounds. Do you know where that reduction is made, whether on the eastern end or the western end of the route, or generally over the route?

A. I could not tell that from my own knowledge.

Q. I will say to you as the record shows, that the reduction is made in the 60 cents charged for first class—only speaking here of first class, for convenience sake—in the haul between the Mississippi river on the east and the Missouri river on the west, and is applied only to goods coming from the seaboard territory. Doesn't that give the seller in the seaboard territory, whether he is a jobber who sells out there to the Missouri river cities or a manufacturer who sells out there, an advantage to just that extent over the manufacturer or jobber, as the case may be, at St. Louis or Chicago, who has to pay the old rate which is 9 cents higher?

A. It would to that extent, yes.

Q. Somebody has to pay that extra 9 cents of course?

A. Yes.

1234 Q. That is to say, to put the question in another way, if the rate between the rivers on traffic originating at Chicago or St. Louis is 9 cents more than the rate between the rivers in traffic originating at the seaboard and going to the same points of destination, namely the Missouri river points, that nine cents greater

charge has to be absorbed either by the jobber or the consumer, is that not so?

nine cents greater charge has to be absorbed either by the jobber or the consumer, is that not so?

A. That is right.

Q. When you say as you have, that it is too small a matter to be considered, in referring to the sales by the eastern jobber or manufacturer to the Missouri river, do you not mean by that to say that the rate touches upon articles which are so costly in themselves that you cannot shipping from New York out there allow that reduction to interfere with your price, it is too small to be taken into consideration by the jobber here?

A. No, what I meant, or what I stated was that the man who was buying the goods could not figure on the price per yard of goods.

Q. The man buying?

A. Yes.

Q. As a matter of fact where there is a differential like that, depending upon the place of origin of the shipment, whether it is New York which has the 9 cents less or Chicago or St. Louis which has the nine cents more, who has to bear that additional nine cents which has to be paid by somebody to the railroads when the shipment originates at Chicago or St. Louis, do you know?

1235 A. I presume the consumer stands it eventually.

Q. In the long run it will make him pay that additional burden for the goods he buys?

A. Yes, sir.

Q. If he is purchasing from the seaboard instead of from Chicago, and the rate from the seaboard between the rivers is nine cents less on the first class haul then he will have saved that much in the long haul will he not?

A. That is assuming that the rates are equal.

Q. No, perhaps I did not express myself well. I mean that where the rates are different, depending upon the origin of the shipment, so that the rate between the rivers, if the shipment originates at Chicago or St. Louis, is, as the order says it must be 9 cents higher than if the shipment originates at the seaboard, that extra nine cents when the shipment originates at Chicago or St. Louis or the intermediate points, must be eventually paid by the consumer must it not?

A. Yes, I should say so. That is my opinion. The consumer generally pays.

Q. So that the consumer would have, if he had the opportunity of dealing with both the seaboard and Chicago or St. Louis, the advantage of that difference in the rate if he dealt with the seaboard, which has the specified nine cent less rate than Chicago or St. Louis which has nine cent higher rate?

1236 A. No, I cannot agree to that proposition.

Q. Will you put it in another way?

A. I will give you any reason if you desire.

Q. Not now. We will take this up again. We assume, as is the fact in the order that is complained of in this case, that where a

shipment originates in New York and goes to the Missouri river the rate is nine cents less than if that shipment originated in Chicago or St. Louis and went to the Missouri river, for the reason that the order of the Commission cuts the rate down nine cents. Now you have already said that the consumer had to stand for that nine cents. I therefore ask you if it would not to that extent of nine cents in the long run be an advantage to this consumer at the Missouri River cities to buy at the seaboard territory instead of buying at Chicago?

A. It would be if the seaboard rate and the Chicago rate were the same but they are not.

Q. They are exactly the same now between the rivers?

A. I am not speaking of that. I am speaking of the seaboard to the Missouri river and Chicago to the Missouri river. There is a vast difference in the rate between Chicago and the Missouri river and the rate between the seaboard and the Missouri river.

Q. Do you know what the rate is between Chicago and the Missouri river?

1237 A. I really could not tell you, but it certainly is not as much as it is from New York to the Missouri river.

Q. But if the Chicago man or St. Louis man was the jobber and was purchasing goods from the manufacturer he would have to pay the rate from New York to Chicago wouldn't he?

A. Yes, I suppose so.

Q. So that that added on to what he would have to pay to the Missouri river would make it the same, the rates being equal, as the Missouri River man would have to pay, and if the rates were in that way equal a change in the rates would give, to whatever extent the change was made, assuming it to be a lessening of the rates from the seaboard to the Missouri river, an advantage to that extent to the Missouri river man who bought at the seaboard rather than to the Missouri river man who bought at Chicago?

A. Oh yes, looking at it in that light.

Q. You speak of several houses failing in New York, or going out of business, was that it?

A. Going out of business. I guess one did fail, that was Sweetzer Pembroke. The rest retired.

Q. What was the one that failed?

A. Sweetzer Pembroke & Company.

Q. Did that house fail because of the falling off in business at the Missouri river?

A. I could not say.

1238 Q. E. S. Jeffray & Company, do you know what business if any they did with the Missouri river points or the western points?

A. Well, they were competitors with us in the territory not only here but in the west and south.

Q. That business of the west and south at its best was much smaller I take it than your business around the east?

A. Oh, it naturally would be.

Q. Jaffray & Company did not go out of business because of the dropping off of business from the Missouri river did they, you would not as a man in this line of business think that was the cause of their going out of business?

A. No.

Q. The same is true of Bates Read & Cooley?

A. I think the reason why they went out of business was the difficulty of eastern jobbers being able to transact their business with a profit as against the many jobbing houses that were being established from time to time all over the country, particularly in the west and southwest more than in the south.

Q. When you say southwest what territory have you in mind?

A. I call Kansas southwest.

Q. Oklahoma?

A. Oklahoma and points of that kind, and Mexico.

Q. And Texas points I suppose.

A. Yes, sir.

Q. Do you know any reason relating to transportation or rates of transportation, that made it possible for these jobbing houses 1239 in the west to rise as they did?

A. No, sir, except from what I learned from inquiry and knowledge that has come to me in the regular order of business, that a retailer buying goods wants them promptly. If he can get them nearer he favors the nearby point. The only advantage that eastern jobbers have is that they may like ourselves carry very much larger stocks and therefore be able to supply the goods that could not be gotten anywhere else.

Q. And you would call that then as to the market a natural advantage wouldn't you?

A. Yes.

Q. I think you stated on your direct examination that the development of the western country in population and wealth had had a great deal to do with the limitations put in the last twenty years on the dry goods houses of New York in selling to the western country, including the Mississippi river and the Missouri river territories?

A. Yes, sir.

Q. The western cities, by their development in population and wealth, became more on a par with eastern manufacturing and jobbing centers I take it?

A. Yes.

Q. That increase in population and wealth was due was it not to the natural increase of the population and wealth of the country at large?

A. I so believe.

Q. And the result of that was to establish manufactures 1239½ where manufactures had never existed before in the west?

A. Yes, sir.

Q. And jobbing houses at places where up to that time owing to the lack of population and wealth no jobbing houses had existed?

A. Yes, sir.

Q. So that a great many of those points in the west which are now big cities comparatively speaking like Chicago, St. Louis Omaha, Kansas City and St. Joe, became what are known in the trade as distributing points, that is true isn't it?

A. That is right, yes, sir.

Q. And the facts that constituted them distributing points were so far as your opinion leads you to believe the natural advantages of growth and nearness to the distributing territory?

A. That is right.

Q. Are you familiar in a general way so far as relates to your own business or similar lines of business, with the territory known as the interior points of Kansas, and Nebraska that is Wichita, Salina, Grand Island, Kearney and all those points? I am only speaking in a general way of those as a group of what one might call distributors?

A. Yes.

Q. I want to put as simply as possible a hypothetical case to you. If a jobber at Salina, assuming that there are jobbers at Salina distributing to the surrounding country, were able to get from 1240 a New York manufacturer or jobbing house, as the case might be, his supplies in these lines, on a rate from the seaboard from New York less than the sum of the local rates from New York to Missouri river and Missouri river to Salina, wouldn't he to that extent, greater or less, have an advantage over the Missouri river jobber who bought from New York at a local rate and sold to Salina at a local rate, the sum of which rates was greater than the rates under which Salina purchased direct from New York.

A. He certainly would to that extent.

Redirect examination.

By Mr. WEBSTER:

Q. I want to go back to a question put to you by Mr. Fyffe as to which you said that you could give your reasons or explain, but which you were not then permitted to do and I will ask to have that read.

The questions and answers were read as follows:

"Q. So that the consumer would have if he had the opportunity of dealing with both the seaboard and Chicago or St. Louis, the advantage of that difference in the rate if he dealt with the seaboard which has under the specified nine cents less rate than Chicago or St. Louis which has 9 cents higher rate? A. No I cannot agree to that proposition. Let me put it in another way. I will give you my reason if you desire."

Mr. WEBSTER: The former question now having been reread to you you may proceed now to state your reasons which you did not then give?

A. My reasons for my opinion are these, that I could not see where the advantage came in of nine cents, because the rate from Chicago and St. Louis to the Missouri River points is much less

than from the seaboard to the same points; hence while it is an apparent reduction in favor of the seaboard there is a very large difference even with the reduction between the rate from New York to Chicago and the rate from Chicago to the Missouri river points.

Q. Goods that are bought by all dry goods houses from the mills or factories pay the rate do they not from the mills or factories to their place of business, or if not that that freight is added in to the cost of the merchandise which the jobber buys from the factory?

A. It is.

Q. Take a jobbing house located in New York city if you please, if you buy goods from the mills or factories in the New England towns, you are required to pay are you not, the local freight from those New England factories to your place of business in New York city?

A. Either way pay it or the mill pays it. Sometimes we buy delivered to New York. Sometimes we have to pay the freight ourselves.

1242 Q. If you buy the goods delivered in New York then the factory charges that freight on to the price which you pay for the goods?

A. Yes.

Q. If you buy from factories you pay the rate on those goods first to New York and then the rate out from New York to your points of distribution where you sell or deliver?

A. That is right. That is to say the consignee pays the rate.

Q. If a Chicago house should buy from the same factory the rate which he would pay on his goods would be the rate from the factory direct to Chicago?

A. That is right.

Q. And he would not pay the rate from the factory in to New York plus the rate out from New York to Chicago?

A. He would not.

Q. So then is it not true that a house like Marshall Field & Company buying from the factories in New England would have an advantage over you in New York on goods which were to be delivered say in Chicago?

A. Yes, I think they would.

Q. And that represents does it not a large share of the business of any New York jobbing house?

A. It represents considerable money in the course of a year. As I have said before the freight does not figure as a very large factor in dry goods.

Q. Let me ask you another thing, a thing that I am not
1243 sure about but I will finish the question anyhow, whether take your own house, I assume that you import quite a quantity of goods during the year?

A. We do.

Q. And that would likewise be true of a house like Marshall Field & Company of Chicago would it not?

A. Yes.

Q. If you import goods you pay what would be the freight by water from Europe to the port of New York?

A. Yes.

Q. When you ship the same goods west to whomsoever you may sell them you pay the local rate from New York to Chicago if you sell them in Chicago?

A. Yes, sir.

Q. Let me ask you whether on the same class of goods if imported by Marshall Field & Company they would not get the rate by sea and rail combined from Liverpool to Chicago which would be less than the rate which you would pay from Liverpool to New York plus your local railroad rate from New York to Chicago?

A. I have so been informed. I haven't any personal knowledge of it.

Mr. Fyffe objected to the answer as being mere hearsay.

Q. If it should be true that the rate from Liverpool to Chicago, both water and rail, is less than the sum of the two locals, be it water from Liverpool to New York and the local from New York to Chicago, Marshall Field & Company would have an advantage over a house in New York on imported goods which would be sold in Chicago?

A. Yes, sir.

Recross-examination.

By Mr. FYFFE:

Q. If that is true, that the rate from Liverpool to Chicago through is less than the sum of the locals Liverpool to New York and New York to Chicago, that would put New York to that extent at a disadvantage with Chicago would it not?

A. Yes.

Q. And give Chicago just that much advantage, and be a discrimination in favor of Chicago and against New York?

A. New Yorkers would view it in that way I suppose.

Adjourned until tomorrow, April 16, 1909, at ten o'clock, A. M.

1245 On April 16th 1909 the parties met pursuant to adjournment.

SEYMOUR S. MACK, a witness produced, sworn and examined on behalf of the defendant intervenors deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. Seymour S. Mack.

Q. Your residence?

A. New York City.

Q. Your business?

A. Buyer of fancy groceries with Austin, Nichols & Company.

Q. How long have you been connected with that house?

A. Nearly five years.

Q. How long has that house been in existence in New York City?

A. About thirty years.

Q. You may state in a general way how extensive the business of that house is or how large it is compared with other houses in the country engaged in the like sort of business?

A. I consider it the largest wholesale grocery house in the world.

Q. Are you familiar with the grocery house of Franklin MacVeagh & Company of Chicago?

A. I am.

Q. And with other grocery houses in Chicago and St. Louis and in the Missouri river cities such as Omaha, St. Joe and
1246 Kansas City?

A. I am familiar with all the wholesale grocery houses in Chicago, Omaha and St. Louis.

Q. I want next to call your attention to the reduction in the class rates ordered by the Interstate Commerce Commission, to wit, 9 cents on first class, 7 cents on second class, 5 cents on third class, 4 cents on fourth class and 3 cents on the fifth class on business originating at the Atlantic seaboard and destined to the Missouri river cities, and ask you whether or not you are familiar with that reduction or you know it when I state it in my question?

A. I know it when you state it in your question.

Q. You may state if you please, from your knowledge of the business and from your experience, whether or not in your opinion that reduction would in any wise prove detrimental to the business of a wholesale house such as that of Franklin MacVeagh & Company in Chicago?

A. It would not in my opinion.

Q. You may state why not?

A. That reduction in rate would be so small that we would not gain any advantage thereby.

Q. Will you state if you please whether or not your house carry any groceries which might be designated as carrying your house brand and if so how far west in the western country your business in such goods extends?

A. What is known as private brands or as you call them
1246½ house brands our house brands do not go further west than Ohio to any extent.

Q. Then putting it in another way, whether goods carrying your private brands are sold by you in the Missouri river territory?

A. They are not.

Q. Then next whether this reduction in rate, spoken of would enable you to sell those goods in the Missouri river zone or territory?

A. I don't think so. The reduction is too small.

Q. Are you familiar with the through rate from the Atlantic seaboard to St. Paul or Minneapolis?

A. I am not.

Q. Let me then state to you a fact, that the through rate from Atlantic seaboard to St. Paul or Minneapolis is the rate from New York to Chicago 75 cents plus 40 cents first class, while the through rate from the Atlantic seaboard to the Missouri river cities is \$1.48. What I want to ask you is whether that lesser rate to St. Paul or Minneapolis, that rate being less than the rate from New York to the

Missouri river points has enabled your house to sell your goods carrying your private brand into Minneapolis or St. Paul?

A. We sell no goods to St. Paul or Minneapolis except some bulk olives.

Q. I wish to call your attention to the fact that Mr. Crosby, the General Traffic man of the Chicago, Burlington & Quincy, 1247 testified in effect that if these reduced rates should be put in force it would prove detrimental to the commercial interests of Chicago and St. Louis and would have a tendency to drive the business from that territory to the Atlantic seaboard. I would ask you to state your opinion whether that would or would not be the effect.

A. In the grocery line I do not believe that would be so.

Q. I wish to call your attention to the fact that Mr. Eyman of the Chicago & North-Western Railway Company testified in effect that if these reduced rates as ordered by the Commission should be enforced it would prove disastrous to the commercial interests of Chicago and St. Louis and I will ask you to state as a commercial man whether in your opinion that disastrous result would follow?

A. It would not.

Q. Let me ask you to state whether or no your house deals quite extensively in imported articles and if so you may enumerate some of them?

A. Mushrooms, French peas, olive oil, French and Italian macaroni, English pickels, jams and marmalades, Pate de Foigras, olives, nuts, lemons and raisins.

Q. I will ask you to state now whether or no in the handling of such imported articles a house located in Chicago such as Franklin MacVeagh & Company have an advantage over you where 1248 the articles are to be distributed in Chicago or west thereof, and if so you may state why and wherein?

A. On some lines of imported goods they get cheaper freight rates direct from European countries to Chicago than we do from European countries to New York and then by rail to Chicago.

Q. Does that apply to the imported macaroni?

A. It does.

Q. Does that apply to any other articles mentioned, Cross & Blackwell's pickels?

A. It does.

Q. Does it apply to imported mushrooms from France?

A. It does.

Q. Does that apply to olive oil from Spain or Italy?

A. That I don't remember.

Q. You may state your experience in the mercantile line, particularly with reference to your line of business, groceries, whether or not Franklin MacVeagh & Company or other houses situated in those western cities, either Chicago or St. Louis, do or do not have an advantage over you in that they are situated nearer the point of consumption, as to the western people.

A. They do.

Q. I will put it in another way, whether that is one of the rea-

sons why a New York grocery house cannot do business successfully or compete successfully with a jobbing house in the 1249 same line of business in the Mississippi River territory?

A. It is.

Q. I suppose you know as a fact that a large percentage of the articles handled by jobbing houses in groceries in the western country deal with commodities which are produced in the middle west and which do not therefore come from New York.

A. They do.

Q. Of course as to all such articles the western house would have the advantage over you, dealing in the same articles by reason of being nearer the point of distribution and therefore having a less freight rate to the point of destination?

A. They would have.

Cross-examination.

By Mr. FYFFE:

Q. Before you were with that house in this capacity what was your occupation?

A. Clerk for F. H. Leggett & Company, wholesale grocers.

Q. In the last five years since you have been with the house you are with now, you have been exclusively giving your attention to the purchase of the commodities they deal in?

A. Imported fancy goods.

Q. Have you anything to do with the sales department of the house?

A. I sell fancy groceries also.

Q. To whom, meaning by the question to purchasers in 1250 what part of the country do you yourself have the sale of these commodities?

A. I sell to the jobbers in Chicago, I sell to jobbers and retailers in New York city and I have sold goods to retailers in Washington.

Q. Do you sell goods to retailers or jobbers in St. Louis?

A. Not myself. My house does.

Q. Do you sell or the house sell to jobbers or retailers in what are known as the Missouri river cities, that is Kansas City, Omaha, St. Joseph and Sioux City?

A. We sell a small quantity to Kansas City retailers. Nothing that I know of in St. Joe, nothing in Omaha, nothing in Council Bluffs or any of those cities.

Q. Do you or your house sell any of these commodities you deal in to points beyond the Missouri river in Kansas and Nebraska, interior western points?

A. No.

Q. Or to what are known as Colorado common points?

A. We sell some in Colorado.

Q. You do sell in Colorado?

A. Yes.

Q. In selling in Colorado with whom do you compete? houses from what localities?

A. That I could not say.

Q. Do you have any competition in selling in Colorado with houses in Chicago and St. Louis?

A. I suppose so.

Q. You do not know of that competition yourself?

A. I do not.

Q. It may however exist?

A. It may exist.

1251 Q. And probably does?

A. I do not know that all these Chicago jobbers send salesmen as far west as Denver.

Q. In making these sales do you have to take into consideration the question of railroad rates in adjusting your prices?

A. Yes sir.

Q. The railroad rate enters of necessity into the price of anything sold where the commodity is to be shipped to the purchaser does it not?

A. Not always with us.

Q. When you say not always with you do you mean by that that you may not take it into consideration because the rate has to be taken care of by the purchaser?

A. Very frequently.

Q. But it has to be taken care of either by the seller or the purchaser?

A. Undoubtedly.

Q. You speak of there being a less rate from the seaboard to Chicago on goods that come from Europe. That is true only of certain commodities is it not?

A. I think you misunderstood the answer. I did not say the seaboard to Chicago. I said from European points to Chicago, and goods coming from European points to New York and then to Chicago.

Q. That is where the shipment is to go to Chicago there would be less of ocean rate?

A. Take for instance Naples, they can get a lower rate on some commodities than I can from Naples to New York and New York to Chicago.

1252 Q. In what part of the carriage between Naples and Chicago is that difference made, is it in the sea carriage or the land carriage?

A. That I don't know.

Q. It may be entirely in the sea carriage so far as you know may it not?

A. It may be.

Q. That reduction in the through rate from Naples to Chicago or perhaps some other points in Europe to Chicago occurs only with reference to certain commodities does it not?

A. Those are specific instances that I can remember now.

Q. There is as you remember it a special rate with regard to these particular commodities?

A. Yes.

Q. I think you named the commodities did you not?

A. I can name macaroni from Italy and pickles from London.

Q. Or marmalade from Dundee also?

A. I do not remember off-hand, but I am quite sure if I was a Chicago merchant I could import them cheaper direct from Europe to Chicago than I could by way of New York.

Q. By that answer you mean that there is a lower through rate from England or Scotland on articles of that kind than obtains in the rates to New York plus the rate from New York to Chicago?

A. That is my answer.

Q. What advantage is there to a jobbing house in your line situated in Chicago or St. Louis in being nearer to the Missouri River cities, in doing business with them?

A. The question of time of delivery, the question of less damage in transit and I may also add local prejudice.

Q. As far as the nearness is concerned, involving quicker transit and less damage, that is an advantage which nearness would give anywhere in the world, is it not, it is not peculiar I mean to Chicago or St. Louis?

A. Yes.

Q. Has not New York a like advantage with regard to its nearby consumers?

A. Yes.

Q. And every other city has an advantage of the same sort?

A. Yes.

Q. So that there is nothing peculiar to Chicago and St. Louis in that general proposition?

A. No.

Q. Would you call that an advantage that Chicago or St. Louis and the other intermediate western cities were entitled to naturally?

A. No.

Q. You don't think they are entitled to it?

A. No, not entitled to it.

Q. You think that there ought to be a differential in rates made against Chicago and St. Louis so as to offset that advantage of nearness of territory supplied?

A. No, I believe that differential rates should be made so that the ultimate consumer could get the goods as cheaply as possible.

Q. But speaking with reference to the advantage derived by Chicago or St. Louis from being near, that is in your opinion is it not an advantage which Chicago, St. Louis or any other city is entitled to by reason of its nearness to its markets?

A. I cannot say they are entitled to it but they enjoy it.

Q. There is nothing against the laws of trade or commerce in the fact that they do have and enjoy that advantage is there?

A. No.

Q. Is it your opinion that that advantage derived from nearness to the consuming market should be offset by any artificial adjustment of railroad rates?

A. I believe that a man should have such certain benefits in the rate that he could compete with far western territory if situated in the east and if situated in the west that he could come from there east and compete with the eastern man.

Q. Your view then would be that it would be only fair to reduce the rate from Chicago to say the Missouri river cities so as to enable New York to be on a standard of equality with Chicago and St. Louis in spite of their natural advantage from nearness to the markets?

A. Yes.

Q. And that that difference should be adjusted artificially
1255 by action I mean of the Government or Interstate Commerce Commission in this case?

A. That is my view of it.

Q. How would you ascertain what the correct reduction of the rates to the west would be in order to meet that competition from Chicago and St. Louis, based on their greater nearness so to speak to the consuming markets of the west?

A. That I have never given any thought to. I would have to consider that matter further.

Q. It would be a matter I suppose though if you had an opportunity to consider it of computation based upon an estimate of how much the advantage was to St. Louis and Chicago and the other cities out there, how much the advantage was to them per hundred pounds say based on their nearness to the western market?

A. Yes, it would have to have that adjustment.

Q. Your house sells I presume to a large extent in Connecticut does it not, southern New England?

A. We sell in southern New England.

Q. I think I remember your saying that your house was perhaps the largest house in your line in the world?

A. Yes.

Q. You sell I suppose heavily to the New York territory do you not?

A. Not as much as other local merchants.

Q. To make the story short, where are your chief sales, where are your chief purchasers located?

1256 A. From Maine to Florida and as far west as Ohio.

Q. You have by reason of your propinquity to the consumer in Maine a heavy advantage over Franklin MacVeagh or any other wholesale jobbing house in groceries in Chicago have you not?

A. No, I don't think so.

Q. You are very much nearer to that market?

A. We are.

Q. I take it that a Maine man has some prejudice in favor of New York as against the far west when he comes to purchasing groceries?

A. The Maine man I might say is in favor of Boston.

Q. He buys to a great extent in Boston?

A. Yes.

Q. But he does buy a great deal from you?

A. He buys some.

Q. Take the market in Connecticut, that is just at your hand, you sell to retail grocers in Connecticut don't you?

A. We do.

Q. He would prefer to buy in New York than to buy in Chicago or St. Louis would he not?

A. He probably would.

Q. And probably Chicago or St. Louis do very little business in Connecticut, isn't that so?

A. Chicago does some business in the New England states. Chicago does some business in New York city.

Q. That is Chicago wholesale grocery jobbers?

1257 A. Wholesale grocery jobbers and some retailers.

Q. Sprague Warner & Company for instance?

A. I don't know about Sprague Warner & Company but I know of one other jobbing house that sells right in New York city.

Q. In that trade you have by reason of your nearness to the purchasing consumer an advantage of course over Chicago just the same as Chicago has an advantage over you in dealing with the farther west?

A. Just the same.

Q. Do you think the rate from Chicago to New York ought to be lowered so as to enable the Chicago merchant to compete with the New York merchant on an equal basis for that business.

A. Yes.

Q. In other words you would give it both ways?

A. Both ways.

Q. Your effort would be to cut out as far as possible the advantage derived by anybody's nearness to the consuming market?

A. Yes.

Q. Do you know what advantage if any is derived by the Missouri river cities by reason of the reduction in rates proposed by the order of the Interstate Commerce Commission which is in question in this case, are you familiar with that or do you think there is an advantage there?

The WITNESS: Do I know what advantage the Missouri river points would have by this reduction in rate?

1258 Mr. FYFFE: Yes.

A. The consumer would gain by that by being able to buy goods cheaper.

Q. That is the jobbing house at one of the Missouri river cities if this reduction of 9 cents on first class is made, and I only speak of first class for convenience sake, would have an advantage to that extent over intermediate points like Chicago or St. Louis?

A. Oh, no, the difference would be so small in this reduction that there would be no benefit gained I think by anybody.

Q. I said an advantage to that extent, whether small or great?

A. Oh, yes.

Redirect examination.

By Mr. WEBSTER:

Q. In speaking a moment ago of the advantage ultimately coming to the consumer did you mean the persons who actually consume the goods as distinguished from the jobbing house?

A. The consumer ultimately.

1259 WILLIAM H. GOMERSALL, produced as a witness on behalf of the defendant intervenors was duly sworn and deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. You may state your name?

A. William H. Gomersall.

Q. State your place of residence?

A. Brooklyn New York.

Q. And your place of business?

A. Austin Nichols & Company, 61 Hudson street New York City.

Q. You may state what is your particular line of business in connection with that house?

A. Traffic Manager.

Q. You may state how long you have given special attention to traffic matters?

A. About twenty-five years.

Q. State in a general way how extensive your acquaintance with that business has been and is at this time?

A. I was associated with the traffic lines for about sixteen years, with a steam ship company about three years and in my present position about six years.

Q. Then I assume in a general way you are quite familiar with traffic rates through the country from the Atlantic seaboard west to the Missouri river?

A. I am, yes, sir.

1260 Q. From your connection with the wholesale grocery house you have mentioned are you in a general way familiar with the business of that house?

A. I would be for the fact that if sales were made in that territory before goods could be shipped they must come to my department for routing.

Q. You may state what the fact is as to whether that house makes any sales to any extent in the Missouri river territory or if not what is about the western boundary of their general business?

A. I cannot recall any business to the Missouri river. When I say Missouri river of course it is understood that means all the cities.

Q. Are you familiar with the reduction on through rates from the Atlantic seaboard to the Missouri river as lately ordered by the Interstate Commerce Commission and which is the subject of investigation and inquiry at this hearing?

A. Only as it has been brought to my attention within the last week or two.

Q. I want to ask you from your knowledge what is your opinion as to whether or no if that reduction of rate should go into effect it would result to the detriment of wholesale grocery houses in Chicago or St. Louis, having in mind such a house for illustration as that of Franklin MacVeagh & Company?

A. I should say not.

Q. You may if you please give some of the reasons for your opinion?

A. The major portion of the goods that are handled by a
1261 wholesale grocer for distribution in the far west are not first
class. There are but few articles, particularly olive oil in
glass. The canned fish and fruit and vegetables take a low basis
from New York to the Mississippi river and a fourth class rate from
the Mississippi river to the Missouri river. So that 9 cent differ-
ential would not apply on that business of course. Macaroni would
move fourth class all the way through.

Q. Taking the reduction which would be on fourth class state
whether in your opinion that reduction in the cost of transportation
would be sufficient to interfere in any way with the business of such
a house as Franklin MacVeagh & Company?

A. It certainly would not. It would be so small it would not be
noticeable.

Q. You may state from your familiarity with rates both by ocean
steamer and by rail whether or not a house like that of Franklin
MacVeagh & Company of Chicago may have the advantage over the
house with which you are connected in goods which are imported
from Spain or France or Italy or other European points, and if so
wherein they would have an advantage over the in and out rate from
New York to Chicago?

A. If they had sufficient quantity of business to warrant the con-
solidation under Rule 5 B which permits the loading of articles
classified under the same class of fifth class shipped by one
1262 consignor to one consignee and receiving the benefit of car
load rate—in other words he could take two hundred cases
of olive oil upon which the less than car load rate is 75 cents from
New York to Chicago and he could take a hundred cases of mush-
rooms upon which the less than car load rate is 40 cents per hun-
dred pounds New York to Chicago and he could take a hundred
boxes of macaroni upon which the less than car load rate is 35
cents, and assemble those three commodities and consolidate them
in one car and bill them out of New York at 36,000 pounds mini-
mum of whatever the cases might be at 30 cents per hundred pounds,
where if they were called upon to make a direct shipment from
New York to the Missouri river of olive oil it would have to be paid
for on the basis of 88 cents New York to East Missouri River or 75
cents New York to Chicago.

Q. And that principle of combination of a number of articles
into car loads that you have spoken of applies does it to any con-
siderable number of articles?

A. Oh yes many.

Q. To the extent that a house like Franklin MacVeagh & Com-
pany could purchase articles in sufficient quantity to make a car
load it would have an advantage over a purchaser whose house was
in Omaha or St. Joe or Kansas City who purchased in less than car
load lots?

A. Certainly.

1263 Q. To get back a moment to articles which say were purchased and shipped from Europe, say shipped from Spain or Italy direct to Chicago, or shipped from the same points to New York and then reshipped by your house to Chicago, does the Chicago house have an advantage on the through rate from Europe to Chicago over the rate from Europe to New York and out from New York to Chicago?

A. It is so reported on a through bill of lading.

Q. Does that apply to any considerable number of imported articles?

A. That I cannot say. That does not come under my jurisdiction at all.

Q. I want to ask you whether in a general way you are familiar with the traffic rates that apply to commodities handled by other jobbing houses different than that of wholesale groceries, in other words are you familiar with freight rates as applied to jobbing houses in the commercial world generally in New York?

The WITNESS: Such as boots and shoes and dry goods?

Mr. WEBSTER: Yes.

A. In a general way yes.

Q. And in a general way are you familiar with the articles which are handled by commercial houses in the cities of Chicago and St. Louis?

A. I am.

1264 Q. I want to call your attention to a bit of testimony by Mr. Crosby the General Traffic man of the Chicago Burlington & Quincy Railroad Company, in this case, to the effect that if these reduced rates as ordered by the Commission should be in force it would result in detriment to the commercial interests of Chicago and St. Louis, and furthermore would have a tendency to drive business houses to the Atlantic seaboard. I want to ask you whether in your opinion if this order of the Commission should be put into force and effect any such result as that stated by Mr. Crosby would follow?

A. No. This condition is not new. It is only presented in a new form.

Q. Then proceed to state and explain what you mean by that?

A. The present all-rail basis New York to the Missouri river is \$1.48 divided 88 cents New York to the east Mississippi river plus 60 cents per hundred east Mississippi river to Missouri river. For many years we have enjoyed an advantage of what is known as differential rate—

Mr. FYFFE: Who is we?

A. We are speaking now of New York merchants. I will change that to read New York. New York has enjoyed an advantage of what is known as a differential rate of ten cents per hundred pounds less than the all-rail rate, or 78 cents New York to east Mississippi river plus 60 cents beyond. The old basis was 77 cents.

1265 The only disadvantage to the differential rate is that the service is slower, probably 48 hours.

Mr. WEBSTER:

Q. I wish to call your attention to a statement made in this case by Mr. Eyman First Assistant General Freight Agent of the North-Western, to the effect that if this order of the Commission reducing rates should go into effect it would be disastrous to the commercial interests of Chicago and St. Louis, and ask you to state whether in your opinion any such disastrous results would follow?

A. No, sir. For the reason before assigned.

Q. Let me ask you whether you do not know of the rate of 40 cents from Chicago to St. Paul and Minneapolis on shipments from the Atlantic seaboard to those two last named cities?

A. No, sir, I cannot say that I know of a 40 cent rate. I would not question the subdivision. I do know of a through rate of \$1.15.

Q. Do you know about when it was that that rate went into effect? I do not mean the year, but whether it was some years ago?

A. Oh, yes, it must be fourteen or fifteen years ago.

Q. What I want to ask you is whether the putting into effect of that rate from the Atlantic seaboard to St. Paul and Minneapolis resulted disastrously or to the detriment of the commercial interests of the city of Chicago?

A. No, sir.

Q. Whether or not it gave the house you represent or other houses in New York such an advantage in selling goods to Minneapolis or St. Paul as to be detrimental to their competitors in Chicago?

A. No, sir.

Q. You may state whether or not as a fact if you know it enabled New York houses to go into St. Paul or Minneapolis which had not been there before?

A. I do not think so. In connection with that question the through rate to St. Paul is governed entirely by official classification, which in many instances is not as liberal as a combination of the official classification New York to Chicago and the western classification Chicago to St. Paul. For instance olives in glass or pickles in glass are charged on the basis of first class New York to St. Paul under the official classification, making a through rate of \$1.15 per hundred. Those same goods may be shipped New York to Chicago at 75 cents, reconsigned from there to St. Paul, pay four cents a hundred transfer and 25 cents local between Chicago and St. Paul, which reduces the through rate which New York has to contend with very materially. The fourth class rate applies on pickles and the 30 cent rate applies on olives. I do not know that that is being practiced but I know that is a possibility.

1267 Q. I wish to call your attention to another phase of testimony in this case to the effect that when merchandise shipped by car load consigned to Omaha as an illustration, that the car may be transferred in Chicago and carried west to its destination without unloading and reloading in Chicago and that when the merchandise comes in less than car load lots it is unloaded and reloaded in Chicago at an additional expense to the railroad companies, by which they contend that thereby they are put at a greater expense of unloading the through freight than they are in unloading the local freight, and

that in the city of St. Louis a car may be transferred from east St. Louis to St. Louis proper to the connecting line for about five dollars a car, but if unloaded in East St. Louis and carried over the bridge to St. Louis by dray the rate is five cents per hundred, thereby increasing the cost to the western roads over local business to that extent. I would like to have you state if you please what your view of that matter is and the advantage if any which the western roads get by having the freight received by them in less than car load lots instead of by car load lots, the increased revenue which the western roads may receive thereby. You can state that at such length as you may care to so as to make it perfectly plain as you understand it?

A. No doubt that statement in reference to the increased
1268 expense is correct, but it is hardly a fair comparison, for the simple fact that the first three class rates from St. Louis to the Missouri river are 60, 45 and 35. Statistics will establish that the average movement of freight will scale down to practically a second class basis in less than car loads movement. We will go further than that and we will say the basis is 40 cents per hundred pounds St. Louis to Missouri river on their merchandise cars. The car load rate of freight from fifth class down with the exception of Class A and B scales from 22 cents per hundred pounds down to 11 cents. Now, if they can afford to pay five dollars per car on eleven cent freight or 22 cent freight without a protest they certainly should not draw the comparison between a nominal charge of we will say 7 cents per hundred which includes the transfer, we will say five cents per hundred for carriage and two cents for terminal charge, when they receive \$3.60 per ton increase over the car load rating based on this highest charge of 22 cents per hundred. That would appear to be a very nice profit in itself. Now, in reference to the merchandise movement from the seaboard there is no trunk line or a differential line of any magnitude but what load through merchandise cars from their New York terminals. They will load from six to eight to ten thousand pounds as a minimum. That car is carded through to destination and is treated precisely

1269 on the same basis as a minimum car load of any class. The Chesapeake & Ohio load a through car over the C. & O. and Big Four and probably the Missouri Pacific, it don't make any difference what the diverging line is from St. Louis, which they load solid from Newport News to many of these Missouri river towns. And likewise, the Norfolk & Western load from Norfolk in connection with the Old Dominion Steamship Company. The trunk lines such as the New York Central and undoubtedly other lines make a specialty of these through merchandise cars which are not required to be unloaded or transferred at St. Louis or any other gateway. Now the Wabash road in connection with the West Shore railroad if they load a through merchandise car they would not send that via the St. Louis gateway, they would send that by Hannibal, pay two cents a hundred bridge toll and that is all the intermediate charge there is. In connection with the North-Western they would send it by Clinton Iowa, the Milwaukee & St. Paul road via Savannah and so on along the line in any of the Mississippi river crossings. So as I said before it is hardly a fair comparison to

bring up this additional charge. Eliminating the question of transfer between East St. Louis and St. Louis the charge in handling transferred freight from one carrier to another should be even less than the handling of platform freight received from a shipper.

1270 Q. One thing I didn't quite grasp of your earlier part of your answer when you were undertaking to state the difference in the amount of revenue which the railway companies would receive in the case where the merchandise received by the western line would be less than a car load, and what they would receive in car load lots. You stated the figures but I want to know about what would be the percentage of revenue to the western roads in the cases where the commodity was in less than car load lots so that they were put to this additional expense of unloading and reloading, the percentage of profit in that case over their revenue in the case of a car load lot where the handling did not take place. I inferred from your statement as you gave it that there would be a difference of a hundred per cent?

A. Just about a hundred per cent but scaling down from 60 to 25 and establishing an average rate at 40 cents per hundred pounds gives you \$8 per ton. Applying the highest car load rate of 22 cents per hundred pounds gives you the cost of \$4.40 per ton. When you scale 22 down to 11 and strike a happy medium the increased per cent earnings is far beyond a hundred per cent.

Q. That would many times over pay the additional expense that any of the railroad companies would be put to in handling the freight?

A. Yes.

1271 Cross-examination.

By Mr. FYFFE:

Q. You are familiar I think with all these freight rates. Do you know that the rate between the Mississippi river points and the Missouri river points on first class, which I only speak of for convenience sake, is 60 cents a hundred pounds?

A. Yes, sir.

Q. From the seaboard to St. Louis is 86 cents a hundred pounds, from Chicago from the seaboard the local rate is 75 cents a hundred pounds, from Chicago to St. Paul is 60 cents a hundred pounds, from the seaboard to St. Paul is \$1.15, which is a through joint rate, the reduction being covered by the western line entirely?

A. Apparently so and if the carrier east gets his full local it is 40 cents west. I am not in a position to say how the rate is subdivided.

Q. It is immaterial here anyway. Lou state *what* that difference between the through rate from New York to St. Paul and Minneapolis as compared with the sum of the local rates New York Chicago Chicago and St. Paul and Minneapolis of 20 cents a hundred pounds on first class is too small to affect the business interests of St. Louis injuriously?

A. Yes, sir that is right.

Q. Why should it not affect them if the Chicago dealer and job-

ber has to compete against a jobber in New York for the
1272 Twin City market at a higher rate in and out than the New York jobber gets through?

A. Any particular jobber, any particular line of goods?

Q. I am speaking of your line, the line that you are most familiar with?

A. Well, on imports such as olives they could import those goods on a through bill of lading in puncheons or casks. They could get them to Chicago in all probability at an equal or less rate than we could via New York. They are in closer proximity to the glass works I think and the cost of the freight on their glass bottles would be less than we would have to pay to New York. Their cost of labor in packing the goods we will say would be on an equality with New York, because I am not in a position to discuss that. Now they have the finished product, olives in bottles, in their warehouse. They have first received the bulk olives in Chicago on the basis of a 30 cent rate as we know it. Now they ship those olives to St. Paul at a rate of 30 cents per hundred. That is 60 cents through on this particular commodity, eliminating carriages at Chicago. When we ship the same commodity from New York we are obliged to pay \$1.15 per hundred pounds or almost a hundred per cent increase. That is one. That will apply on pickles. Now we will take shipments of peas, which they may purchase in small quantities. We buy them on the Michigan Peninsula. We have got to pay if
1273 we bring them to New York 30 cents per hundred pounds car loads. If we reship back to St. Paul we ship back on the basis of Rule 26. The Chicago jobber may purchase the same identical peas at the same identical spot and get them into Chicago for ten cents per hundred. He can ship those from Chicago to St. Paul for 25 cents. He pays 25 Chicago to St. Paul where the New York jobber is obliged to pay 30 cents from the Peninsula to New York not mentioning the rate from New York to St. Paul. I cannot think of any other but the same conditions would apply. You know the liberality of the western classification.

Q. Those advantages that you have been running over where the Chicago jobber has an advantage over the New York jobber are what one might call natural trade advantages from locality or from power to purchase in bulk and change into smaller vessels, those are natural trade advantages are they not?

A. Certainly.

Q. You wouldn't consider would you that because of those natural trade advantages the Chicago merchant had the jobber competing with him thereby entitled to a less rate to St. Paul so as to offset these natural trade advantages?

A. Aren't you getting away from the question you asked me?

Q. I don't know. I asked this last one.

A. You asked me whether that reduction was to the detriment of Chicago and the advantage of New York and I told
1274 you no and I explained.

Q. I have now asked you another question which as I say I would like an answer to.

Objected to by the counsel for the defendant intervenors on the ground that it is not cross-examination of anything testified to by this witness and is a hypothetical question with reference to a matter which is not the subject of inquiry in this case and is not involved in this litigation?

A. I should consider that that was a question for a merchant to answer and not a traffic man.

Q. What would your own opinion on it be, whether New York was entitled in fairness to a lower rate to the Twin Cities to offset these natural trade advantages of Chicago in these particulars?

Objected to as before.

A. It is needless to say that the exception was not made for the benefit of New York or its merchants, but it was made as a protection to the carriers from Chicago to St. Paul in order to meet the water competition from Buffalo.

Q. I understand that. I still ask the same question whether because of the natural trade advantages of Chicago the New York jobber would be entitled as a matter of offset to those natural
1275 trade advantages to a lesser rate to St. Paul or any other point beyond where those natural trade advantages of Chicago took effect?

The same objection.

A. I have answered that that I should consider that was a question to be answered by a merchant.

Q. I did not ask you your opinion as to who ought to answer the question. I asked you if you have any opinion on the subject.

A. I have none.

Q. Take the case of a commodity in your line of business or any other line of business affected by this reduction between the Mississippi and Missouri rivers sold by jobbers in New York and jobbers in Chicago and by jobbers in Chicago to jobbers or retailers in the Twin Cities and where the difference in the through rate of freight is 20 cents a hundred pounds if it is first class——

The WITNESS: Under both classifications.

Mr. FYFFE: Yes, sir. Would you consider that difference of 20 cents a hundred pounds sufficient to unjustly affect the Chicago houses?

A. Not from a grocery standpoint.

Q. I am speaking now you understand of articles whether groceries or otherwise which do not change in form at Chicago but which go in the same form from New York to Chicago and then from Chicago shipped on to the Twin Cities?

1276 A. No because the difference would be so trifling it would not be apparent.

Q. That is just what I am getting at. The difference is so trifling that you mean it would not make a difference in the price?

A. Not at all.

Q. But somebody has to pay it of course?

The WITNESS: May I illustrate?

Mr. FYFFE: Let me ask you this question, somebody has to pay that of course, somebody has to pay the difference?

A. Certainly.

Q. If the Chicago man buys a certain commodity which we will call A, from New York, and pays 75 cents local rate to Chicago and then ships it on to his customer, jobber or retailer in St. Paul and pays 60 cents on it, while on precisely the same article the New York merchant sells direct to the Twin Cities at a rate of \$1.15 or 20 cents per hundred pounds less than the in and out of Chicago rate who is it that pays that 20 cents a hundred pounds additional, in the ordinary course of trade?

A. Well, as I said before the difference would be scarcely perceptible. That is I mean from the standpoint of a grocer. The only article that I can recall at the moment that is first class through to St. Paul under both classifications is olive oil.

Mr. FYFFE: I object to the answer as irresponsible to the
1277 question which is who pays the difference of 20 cents.

The WITNESS: The merchant will pay it.

Mr. WEBSTER: The witness will go on with his answer if he is not through.

Mr. FYFFE: The merchant in New York or St. Paul?

A. The buyer, except the shipper sells the goods less freight to destination.

Q. Sometimes goods are sold less freight to destination?

A. Frequently.

Q. And sometimes the purchaser pays?

A. The question of freight affects the cost. That goes without saying.

Q. Coming to another matter, I think you stated that the rate from New York through to the Missouri river cities is \$1.48 a hundred pounds. We will speak only of first class for convenience sake. That is 33 cents more than the rate to the Twin Cities of \$1.15. The distance from New York and the seaboard to Missouri river points is just about the same as to the Twin Cities?

A. About the same.

Q. Would you give the same answer in that case with regard to shipments from the seaboard to the Missouri river points as compared with shipments from the seaboard to St. Paul that the difference in the rates would not affect injuriously the merchants
1278 of the Missouri river cities, because it is so little as applied to the goods sold?

The WITNESS: Affect the interests of the Missouri river jobbers?

Mr. FYFFE: Yes sir.

Mr. WEBSTER: You mean the Mississippi river jobbers?

Mr. FYFFE: No, to St. Paul and Minneapolis the rate is \$1.15.

A. Yes.

Q. Out to the Missouri river cities, I mean Omaha, St. Joseph, etc., the rate is \$1.48. The distance is just about the same from New York to St. Paul as from New York to the Missouri river. Now

do you consider that the Missouri river jobbers are unjustly affected in their business by reason of a difference of rate amounting to as it is there 33 cents a hundred pounds on first class, or is that too small in relation to the value of the goods to be taken into consideration?

A. That is too deep for me to fathom. I understand your question as you put it but there are many elements entering into that to be considered before that question in my opinion could be answered intelligently.

Q. I understood you to say that the difference of 20 cents between the rate from New York in and out of Chicago to St. Paul, as compared with the rate from New York to St. Paul through, was too slight a difference in the handling of the business to injuriously affect the jobber at Chicago, in other words the Chicago jobber couldn't disregard that difference?

A. I explained that as I thought. I can not go on and enumerate every article that is handled. I cited several instances where instead of benefitting New York it is against her interests.

Q. The rate is not against her interests is it?

A. Certainly not but it is the application of the rate.

Q. I tried to make myself clear in this that I asked the question before in regard not to an article which changed in some way but in regard to any article of which there are a great many I understand that are bought in New York and go to Chicago and in the same form go from Chicago to St. Paul?

The WITNESS: First class all the way through?

Mr. FYFFE: Yes, sir. I understand that in articles of that kind you said that the difference of 20 cents was too small to be taken into account?

A. So it is.

Q. Now take the same character of articles as between a shipment from New York to St. Paul at \$1.15 and New York to Omaha at \$1.48, would the Missouri river merchant at Omaha be injuriously affected in his business by that difference in rate, or is it too small to be taken into account?

1280 A. If he received this 20 per cent reduction would he be benefited?

Q. Would he be benefited if he got that, yes?

A. Not to any great extent.

Q. It is in the handling of the business, the point is it is too small to be taken into consideration.

A. No, it would be a benefit to the Missouri river merchant, but it would not be detrimental to Chicago and in favor of the interest of New York.

Q. I do not speak of either Chicago or New York. I was comparing the Missouri river with St. Paul, whether the fact that there was a difference of 33 cents injuriously affected the Missouri river merchant or was too small to be taken into consideration, 33 cents a hundred pounds, is that too small an amount to be taken into consideration?

A. No, that is a big saving in itself.

Q. Isn't that true then of the 20 cents difference in the through rate from New York to St. Paul as against the in and out rate to Chicago and St. Paul, isn't that 20 cents large enough to be taken into consideration there?

A. Any reduction of freight rate is a saving.

Q. And any reduction of freight rate gives an advantage doesn't it to the merchant who gets that reduction?

A. Certainly, it is a saving to him, but who does it benefit on the other side?

1281 Q. I don't know. I didn't ask you that question. I simply asked whether it was a benefit to the merchant who got that reduction?

A. Any reduction of freight rate is a benefit to somebody. That is certain.

Q. It would be a corresponding disadvantage wouldn't it to any merchant in some other territory who would compete with the merchant who got the 20 cents?

A. No, sir.

Q. So that one man gets an advantage out of a freight rate without a corresponding disadvantage to anybody else?

A. No. You put that in such a manner that probably I cannot answer it as intelligently as I would like to. The point at issue as I understand is how much New York would be benefited—

Mr. FYFFE: No, sir. The point is simply to answer my questions. Excuse me. We are not arguing the case now.

A. We all know very well that any reduction, as I stated before, in freight rates, is beneficial to not only the shipper but the receiver and the consumer.

Q. There is one other question I forgot about which I want to ask. Business comes from Cincinnati through to the Missouri river cities by the gateway of St. Louis, business comes from the seaboard to the Missouri river cities by the gateway of St. Louis. You testified in your direct examination as to the question of the terminal charges at St. Louis. You would not make would

1282 you, any distinction in terminal charges as between traffic that came from Cincinnati or Cleveland or Toledo as compared with traffic that came from the seaboard?

A. There should be no distinction if the same rate basis applies from St. Louis.

Q. I am only speaking now of the terminal charges across the bridge, \$5 per car and two cents I think you stated a hundred?

A. No five cents.

Q. For the cartage?

A. Yes, and two cents house handling charge.

Q. If the shipment originated in any of this intermediate territory east of St. Louis these handling charges would be just the same?

A. The point of origin has no bearing on it.

1283 ALBERT D. MORSTADT, a witness produced, sworn and examined on behalf of the defendant intervenors deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. State your name?

A. Albert D. Morstadt.

Q. Your place of residence?

A. Hotel Cecil, New York city.

Q. You may state your business?

A. I am the treasurer of the Union Paper Company located at 844 Washington Street New York city.

Q. I will ask you whether your company is engaged in the manufacture of what are commonly called fiber cans.

A. Yes, sir.

Q. Do you know of the fiber can factory at Detroit Michigan with which Mr. White is connected?

A. I know that there is a Kemiweld Can Company at Detroit with which Mr. White is connected.

Q. You may state how long your house has been engaged in the manufacture of fiber cans in this city?

A. The business which the Union Paper Company now owns was established and has been in continuous development since 1876.

Q. You may state if you know where are located the mills from which come the fiber material as raw material as raw material
1284 which enters into the manufacture of fiber cans, stating the different places there may be where the products may be purchased?

A. The states of Ohio, Michigan, Pennsylvania, New York, Massachusetts and there are other states, but I would say those.

Q. Do you know whether there are any of those places that manufacture the fiber that are situated near where the Kemiweld Can Company's factory is at Detroit?

A. There are mills up in western New York.

Q. If there be some in Michigan might they not be nearer to Detroit than the New York mills?

A. Yes, I was trying to think what mills there are in Michigan. There are mills in Michigan but just where I could not say off-hand.

Q. Do you know about what the freight rate is per hundred pounds on the fiber material from the mills in western New York to New York city?

A. I could not say in western New York but I could say in Ohio which is about 17 cents a hundred pounds.

Q. So far as you know it would be about the same rate think you from western New York to New York city?

A. I should think about the same. I am not positive.

Q. And in the purchase of that material when delivered in
1285 New York, either you pay the freight or I suppose the freight is added to the price if delivered in New York?

A. The freight is added to the price or embodied in the price.

Q. I presume you do not know what would be the freight rate on the raw material from western New York to Detroit where these mills are that you have spoken of?

A. I am advised that from Poughkeepsie New York the freight rate is 12 cents per hundred pounds.

Q. Do you mean from Poughkeepsie?

A. Poughkeepsie to Detroit yes sir. I am so advised.

Q. Are you familiar with the amount of reduction which has been ordered by the Interstate Commerce Commission in freight rates on what is termed Atlantic seaboard business to Missouri river cities on the first five classes?

A. No, sir.

Q. I will state them. Nine cents on first class, 7 cents on second class, 5 cents on third class, 4 cents on fourth class and 3 cents on third class. And I will ask you to state in your own way if that order reducing the freight rates just named and to that extent should be put into force and effect whether it would result in driving the Kemiweld can factory out of business in the Missouri river territory, and give you people of New York such an advantage that you would monopolize the business and you may state if not why
1286 not, and give your reasons for your opinion?

A. If I may answer that question in my own way I would take as an illustration the shipping of cans from New York to Omaha. We would get into a car, an ordinary freight car 45,000 cans about. I am quoted a freight rate 14,000 pounds minimum, to the Mississippi river, at 41 cents per hundred, from the Mississippi river to Omaha 10,000 pounds minimum weight 45 cents per hundred, making the total cost to us of getting a car from New York to Omaha \$102.40, or at the rate of \$2.27 per thousand cans. Taking the same car and applying the rate which I am advised is in effect between Detroit and Omaha of 65½ cents per hundred weight, 14,000 pounds minimum, 45,000 cans to the car amounts to \$91.70, which would make the cost to the Detroit manufacturer of transporting one thousand cans from Detroit to Omaha \$2.04 against our \$2.27.

Q. You figure in your answer under the existing rates as they are today?

A. I am taking the rates as they are today. I am advised that 65½ cents is the Detroit rate. I have been unable to get that by telegraph. I telegraphed to Detroit yesterday and could not get a reply. They are waiting for it this morning.

Q. The advantage now in favor of Detroit on one thousand cans is how much?

1287 A. Twenty-three cents.

Q. If the rate was reduced as by the order of the Commission it would still leave an advantage in favor of the Detroit man on the manufactured product of how much?

A. I am not sufficiently familiar with these rates in this way. I think the rate as quoted by the railroads so much a hundred pounds

for our particular commodities and we never go by the 9 cents. They do their own figuring out.

Q. Your goods go at what class?

A. Fourth class.

Q. Do you mean fourth class under the eastern classification?

A. Fourth class under the eastern classification.

Q. Or in other words, if the reduction was four cents a hundred how much would that reduce that advantage which the Detroit man has?

A. If the rate were reduced four cents per hundred pounds taking 14,000 pounds of minimum weight in a car it would reduce the cost of his cans 12 cents per thousand.

Q. He would still have an advantage over you of how much?

A. Eleven cents.

Q. So then it turns out instead of the Detroit man being ruined if the change should go in he would still have an advantage over you of eleven cents?

A. It would appear that way.

Q. Without the reduction he has got an advantage over
1288 you of some 27 cents?

A. Twenty-three cents.

Cross-examination.

By Mr. FYFFE:

Q. Do you make fiber cans?

A. Yes, sir.

Q. You also deal do you not in the raw material itself?

A. No, sir, exclusively manufacturers.

Q. Do you sell to people on the Missouri river at all?

A. I don't know of any concern we are selling out there. We may make small sales to which I do not pay much attention.

Q. Your business is mainly in the east?

A. Yes.

Q. Do you know what the percentage of moisture is in the raw material of wood pulp?

A. No, sir.

Q. It is very high isn't it?

A. It is very little indeed. There is very little moisture. All of our stock is practically bone dry. It must be as near it as it is possible to make it.

Q. You are speaking now of the time when you come to make it up into the product?

A. No, sir, the time it arrives on the dock from the mill. These boards that we use are not supposed to contain moisture.

Q. Would you be kind enough to tell me where your house gets its raw material, I do not mean from what particular person?

1289 A. We buy it all over the country. That is when I say country I mean east of Chicago. We buy it in Ohio at various points. We are not confined to any one particular section of the country.

Q. You buy it in Massachusetts do you not?

A. We buy some in Massachusetts.

Q. Some in New York and Pennsylvania?

A. Yes, some in Pennsylvania and some in Ohio.

Q. Where do you get the bulk of it?

A. That is difficult to say, it is scattered so. The board business is a sharply competitive one. There are really mills practically in every state.

At this point an adjournment was taken until tomorrow Saturday April 17th, 1909 at ten o'clock A. M.

1290

SATURDAY, April 17, 1909—Ten o'clock A. M.

The parties met pursuant to adjournment, at the same place, Room 203 No. 43 Leonard Street, New York City.

JOHN SHANN, a witness produced, sworn and examined on behalf of the defendant intervenors, deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. What is your name?

A. John Shann.

Q. You reside in New York City.

A. Brooklyn.

Q. What is your business?

A. Wholesale hardware jobbers.

Q. What is the name of your firm or company?

A. Masbach Hardware Company.

Q. The place of business of that company is where?

A. 84 Warren street New York city.

Q. Are you familiar in a general way with the jobbers in the hardware business in the city of New York?

A. We come in touch with them very often. Of course we can follow out their territory very closely because our men mingle together.

Q. Without asking you to stop to mention them do you
1291 know the names of the firms or companies in this city who are engaged in jobbing hardware?

A. All the prominent ones.

Q. You may state in a general way how your firm or company compares with other jobbing hardware houses in this city?

The WITNESS: In size?

Mr. WEBSTER: Yes, sir.

A. We are one of the largest.

Q. How long has your house been in business in this city?

A. We have been in the retail business for thirty-five years. The wholesale has been twelve years. There was some jobbing done at the first store that we started. This store that I am connected with is entirely jobbing and that has been in existence twelve years.

Q. You may state about the border line or limit of the territory

through which your house does business, I mean simply to call your attention to the territory west of New York City?

A. We are forced to confine our business to the States of New York, Pennsylvania, Maryland and of course down east, Connecticut, Massachusetts and Maine. We cannot even take the northern part of New York state because the competition there is too great.

Q. Then I assume from your statement that you do not do any business in what might be termed the Missouri River zone or 1292 territory?

A. None whatever.

Q. Is that equally true of other hardware jobbing houses in this city?

A. So far as I know. There are several catalogue houses in this city that sell a great many second quality and job lots of goods at reduced prices, that is way under the market. They are second quality and job lots, goods that the manufacturers cannot dispose of in the regular way and they are turned over to these houses and their territory extends to the west and extreme south, but they are not what you would call regular jobbers. They do not class with the better houses.

Q. I wish to call you attention to the fact that the Interstate Commerce Commission have recently made an order reducing rates on through business from the Atlantic seaboard to the Missouri river as follows, on first class 9 cents a hundred pounds, on second class 7 cents a hundred pounds, 3 class five cents, fourth class 4 cents and fifth class 3 cents. I desire to ask you whether that reduction in freight rates from New York city to the Missouri river cities would or would not enable your house or other hardware houses in New York city to extend your business west to the Missouri river?

A. From our business experience I cannot see where it will help increase our business. Do you want to know the reasons why?

1293 Q. Yes, sir, you may state your reasons why it would not enable you to do business in that territory?

A. Of course there are a number of reasons. One is towns having a population of 15,000 or more are able today to support their own jobbers, and dealers prefer to do business with people that they know. Further if they have to go a distance of a hundred miles or more it means a big loss of time in shipping goods. The freight rate is not always considered. I do not know whether you want me to state when we tried to get business in the west about seven years ago. Do you want that to go on record?

Q. Yes, if you made an effort and failed I would be glad to have you state it?

A. This was in 1901. We tried to establish a western trade. We had a salesman located out there and even went as far as offering to pay the freight. He succeeded in getting some business but it was only small and finally we gave up the effort, as there was not enough business to warrant us to go there. We also know of cases where the western jobbers have come to the eastern cities and tried to do business but they have been up against the same proposition that we eastern jobbers have. It has not been successful.

Q. Do you know of the Simmons Hardware Company in the City of St. Louis?

A. Yes, sir.

1204 Q. I wish to call your attention to the fact that Mr. George W. Simmons of the Simmons Hardware Company testified in effect that there were hardware houses in the Atlantic seaboard territory which were competitors of the Simmons Hardware Company in its business in the western territory. I wish to ask you if you know of any jobbing house in New York City that would come in competition with the Simmons Hardware Company in selling hardware west of the Mississippi River?

A. I might answer that this way, there are several large manufacturers represented in this city who carry on a jobbing business as well as manufacturing, and the parties I referred to are Sargent & Company and Russel and Erwin. They are the largest builders hardware manufacturers in the world and they carry on a jobbing business as well.

Q. You mean by that they sell their own manufactured product over the country?

A. As well as outside manufactured goods. They of course use outside goods to complete their line.

Q. But the goods that are handled or produced by these manufacturers and handled by them are not such as would pass through your house so that you could be enabled to come in competition with the manufacturer, or do you?

A. I do not quite catch the meaning of your question. We
1295 handle of course the same goods that they job.

Q. Is that known as shelf goods or heavy hardware?

A. Tools and goods of that nature.

Q. I call your attention to another fact, that Mr. Simmons testified in effect that if this reduced rate that I have heretofore mentioned should go into effect it would have a deterrent effect upon the development of the business of the Simmons Hardware Company of St. Louis and west thereof?

A. I wish they had tried to figure it that way when they tried to establish an eastern agency here and tried to control the business of Greater New York. They did not stop to think of that.

Mr. Fyffe objected to the answer as not responsive to the question.

Mr. WEBSTER: What is your opinion as to whether or not this reduced rate would or would not tend to have a deterrent effect upon the business of the Simmons Hardware Company?

A. You are figuring now on territory just west of the Missouri river or the Mississippi which?

Q. At St. Louis the Mississippi and Missouri come together and I am speaking of the territory west of St. Louis?

A. In my opinion I cannot see where it can be detrimental to them in any way.

Q. Then if I understand you correctly this reduction in
1296 the freight rates that I have spoken of would not be sufficient to enable a hardware house in this city such as your own, to do any business west of the Missouri river?

A. That is our experience.

Cross-examination.

By Mr. FYFFE:

Q. What is your connection with the firm that you are speaking of?

A. Buyer and manager.

Q. Do you have anything to do with the sales department of the concern?

A. I oversee a large portion of it.

Q. Does your business bring you as a habitual matter into matters connected with the consideration of freight rates or traffic questions?

A. It has heretofore.

Q. But does not now?

A. No. Just repeat the question.

The question was repeated.

A. It does in the eastern territories but not the west. In the southern states, that is as far as Maryland, we prepay freight.

Q. I think the witness misunderstood the question. I was asking the witness as to his own personal action, whether you were personally brought into relation with the matter of the tariffs and the matter of freight rates in your connection with your house?

1297 A. Whatever connection there is I have been brought into it.

Q. Has your house ever done any business out west except seven or eight years ago on the occasion when as you stated you endeavored to work up a western business?

A. No further west than New York state and Pennsylvania.

Q. You do not sell as far west as Cleveland and Toledo?

A. No, sir.

Q. Nothing at all in Chicago or St. Louis or the Missouri river points?

A. No, not outside of seven years ago.

Q. Do you understand where this reduction that General Webster stated to you falls, on what part of the haul between the seaboard and the Missouri river cities?

A. Well, I suppose he means from New York.

Q. I would then state as a matter of fact that this reduction of 9 cents on first class and running down as General Webster correctly stated, falls on the haul between the Mississippi river crossings so-called and the Missouri river cities, meaning by Missouri river cities Kansas City, St. Louis, Omaha and Sioux City and others perhaps in the immediate neighborhood?

A. That covers any of the eastern points though I suppose to these points, whether New York or Jersey or Philadelphia or any of these points?

1298 Q. The reduction is a reduction on the rate between the rivers as applied to traffic coming from the seaboard but not as to traffic coming from the intermediate or Central Freight Association territory. Wouldn't you say that that reduction which is given under the Commission's order to the seaboard which is not given to the immediate territory in the west and middle west would

be an advantage to any jobber in New York or the seaboard who had occasion to ship goods out to the Missouri river points?

A. No, I cannot see where because the jobbers in the west are larger than we are and they are located nearer these points than we are. That would off-set the difference in freight.

Q. That advantage that they have in regard to nearness to their customers is of course a natural advantage is it not?

A. A decided advantage.

Q. But a natural one?

A. It would be a natural one

Q. It does not flow from any artificial or any arbitrary state of circumstances?

A. It is a natural one.

Q. It comes from nearness to market?

A. Yes, sir.

Q. You say there is also the fact that the jobbers in the west have such large jobbing houses that that enables them to compete successfully with the New York merchants?

A. I did not mention that I don't believe but I said this, that dealers would prefer much to buy goods from people that they know, from home, people they are familiar with, people that they know what kind of business they do, and not buy from strangers.

Q. That is simply a natural human tendency isn't it?

A. That is one of the reasons why they get the business.

Q. A man would sooner deal, your idea is, with his neighbors than with people who are a few miles away, other things being equal?

A. Other things being equal. That is a big advantage. And then I might add that time is a big advantage to dealers. If they can buy at home and save four or five or six days' time they will do it. They are many advantages to that one thing.

Q. Would you say that the reduction that I have spoken of between the rivers from the seaboard, enabling the Missouri river cities to get their goods say from New York, speaking of the first class at 9 cents a hundred pounds less rate than they can get goods from Chicago or Cleveland or St. Louis, would you say that that would be an advantage given to the Missouri river points?

A. You are speaking now exclusively of buying goods from jobbers or from manufacturers?

Q. Buying goods from jobbers?

A. If you are not mentioning who they are buying goods from I cannot answer.

Q. I am speaking in a general sense.

A. Because I know the manufacturers sell west. If you are speaking of jobbers I cannot say where there would be any advantage.

1300 Q. Let me put a case, a supposititious case, but one which must occur. A jobber at Omaha, or Kansas City, under the order of the Commission if finally enforced, could purchase from New York and get to his place at Kansas City or Omaha first class

goods at 9 cents a hundred freight rate under what he could ship the same goods from jobbers at Chicago or St. Louis, would you not say that that difference of 9 cents a hundred pounds gave the jobber on the Missouri river an advantage over the jobbers at Chicago or St. Louis who would have to get their goods from the seaboard at the full local rate and ship at a 9 cent higher rate than the Missouri river jobber could get his goods from New York, wouldn't that be an advantage to that extent?

A. Excuse me just a minute. You speak of jobbers in St. Louis. Of course we do not sell to jobbers, we sell directly to dealers.

Q. Pardon me. I am speaking now in the way of general business and not necessarily restricted to your own, because your experience in your business has enabled you to understand the general method of handling the trade whether it is hardware or groceries?

Q. You asked a question whether it would be a material benefit to the jobbers in St. Louis if they should get a 9 cent freight rate from New York, that is 9 cents less than they get from Chicago.

1301 Q. No, that was not the question. The question was this— I will take a little time so as to make it clear, if a Chicago jobber or St. Louis jobber, under this order, wants to sell to Kansas City or Omaha he buys the stuff in New York say, gets it to Chicago and unloads it there, and then sends it on to the Missouri river, the Missouri river man may buy direct from New York and when he buys direct from New York he has a freight rate on first class goods which is 9 cents less between the rivers than that which the Chicago jobber has to pay. I now ask you whether that condition would not be an advantage in favor of the Missouri river merchant and against, to that extent, the Chicago merchant?

A. It is a rather difficult question to answer. It looks plausible, it looks good, but there are so many other things to off-set that difference that in my opinion I do not think they would patronize it.

Q. But taking it as a mere matter of freight rate alone, a difference in freight rate is always, taken by itself, an advantage to that extent is it not?

A. If there is nothing else to figure but freight rates naturally there is an advantage.

Q. I only want the answer limited to what I asked. Other things being equal, all other things being equal the difference in
1302 freight rate in your favor would of course give you to that extent an advantage would it not?

A. I would say yes, all other things being equal, but you have got many other things.

Q. I take it that you are personally in favor of this reduction of freight rates between the rivers, given to seaboard traffic?

A. I am in favor of it.

Q. You are in favor of it?

A. Yes, sir.

Q. May I ask the reason why you are in favor of it if you think it would not make any difference one way or the other?

A. It would make some difference. We have a great amount of freight coming east from the west. A great many of our goods

we buy from the west, such as shovels, files, and some tools and there would be a saving of course.

Q. How would the saving under this order, if it went into force affect you? Say you are buying a hundred pounds of files, where do you get those?

A. Anderson Indiana. I believe that is west of the Missouri isn't it.

Q. It is east?

A. That would not be affected by it.

Q. Do you buy any of your goods as far west as any of the Missouri river cities?

A. I was under the impression that Indiana was west of that point.

Q. No, Indiana is this side?

A. I haven't looked at the Geography for so long that I am a little off on that.

Q. Indiana is this side of Illinois. Do you buy any of 1303 your goods that you deal in from Missouri river points?

A. No. I thought it was further west. We buy this side of that.

Q. In that case your house is not interested one way or the other in this rate, first because you do not sell any goods to Missouri river points and second because you do not buy any goods from there?

A. No.

Q. So you would not have any interest, according to your statement in the matter?

A. No.

Q. But if you did, as we were speaking of before, if you did buy files and shovels from these Missouri river points so that you were enabled to get the goods from Kansas City or St. Joe across the distance between the rivers at a lower rate, that would give you a certain advantage would it not?

A. It would. The advantage would be this, we would be able to get lower prices according to the freight.

Q. Just to that extent, that is always figured in?

A. That is always figured in.

Q. So that freight rates are part of the cost of goods laid down?

A. It figures in the cost.

Q. You speak of Russel Erwin & Company?

A. Yes, sir.

Q. They both manufacture and job?

A. Yes, sir.

Q. They sell in whatever their territory is the goods they manufacture and they also complete their stock by acting as 1304 ordinary jobbers do they not?

A. Yes.

Q. They do an all around general hardware manufacturing and jobbing business?

A. Yes, sir.

Q. So that at least the goods they sell include all sorts of general hardware, combined with the stuff they manufacture?

A. It don't cover an all around general line. It just consists of tools mainly, beyond their manufactured goods.

Q. Are you familiar enough with their business to know how far west they cover territory?

A. No. They are not classed as jobbers.

Q. Houses like that as I understand you to say in your direct examination do sell in a much more extended territory than a mere jobber would?

A. I would like to add to that that we sell mainly to jobbers and not consumers. They are dealers like Simmons Hardware Company and people of that class.

Q. So that they would sell out at the Mississippi river and the Missouri river?

A. I would not want to say how far west they go. I am not familiar with that.

Q. Do you know whether they sell to houses like the Simmons Hardware Company in St. Louis or Chicago?

A. Of that character, yes.

Q. And in that territory?

A. I would not want to say because I am not positive.

1305 Q. You do feel pretty sure that they do sell in the west?

A. They sell some of the large jobbing houses. I am not familiar with the houses that they do sell to.

Q. They do sell in the west generally?

A. Yes, sir. I would rather have you ask that question on Sargent & Company because I am more familiar with them than Russel & Erwin. They both do the same class of business.

Q. Let me ask you about Sargent & Company. Is Sargent & Company a firm located here in New York?

A. They are.

Q. Do they do a manufacturing business as well as a jobbing business?

A. Yes, sir.

Q. What is the line of hardware that they deal in?

A. Builders hardware is the main line.

Q. They do a general jobbing business too?

A. They do some jobbing.

Q. Is it much like your own line of business?

A. The line is not near as broad as ours.

Q. Still they are hardware jobbers and manufacturers?

A. That covers the point.

Q. Do they deal in the west.

A. Yes.

Q. As far west as Kansas City, St. Joe and Omaha?

A. I wouldn't want to say positively. They may go as far as California. I believe they do.

Q. They sell right through to the Pacific coast?

1306 A. Yes.

Redirect examination.

By Mr. WEBSTER:

Q. Is it not true that at the present time large quantities of hardware, particularly what might be known as heavy hardware are manufactured in the west, say at Pittsburg and Cleveland where the iron mills are?

A. There is, including Pennsylvania.

Q. If a New York house should handle the hardware manufactured in that country who would pay the freight in here, who would be burdened with that additional freight rate?

A. He pays it indirectly.

Q. Then a St. Louis house would have an advantage over you as to such goods by reason of the place of manufacture and production being that much nearer St. Louis, you having to pay the cost of the freight on those goods into New York and then to reship them to St. Louis even if you could do so at all?

A. They would have that advantage.

Q. Even in your business than you handle in New York, limited as you are in your territory, you handle some goods more or less that are manufactured in western Pennsylvania and in that country I take it?

A. Yes, but there is nothing beyond the Missouri River.
1307 So far as I know now it is confined this side of that.

Q. The place of manufacture is in western Pennsylvania or Cleveland Ohio or in that vicinity?

A. Yes, sir.

Q. A moment ago a question was put to you on cross examination whether the reduction of 9 cents per hundred pounds from the Atlantic seaboard to the Missouri river might be an advantage to Missouri river towns to that extent, coupled with the phrase, all other things being equal, and you eventually answered the question with reference to that condition, to wit, all other things being equal. I want you to state whether it is possible that all other things are or could be equal with reference to the hardware trade, between a New York house and a St. Louis or a Missouri river house?

A. I have covered most of that in my previous statements.

Q. Quite correct, but as you were permitted to give that answer in your cross examination I wanted you to answer my question and see whether there is a condition where all things could be equal so that there could be any application at all of the question which was put to you.

A. They will save time buying from the west.

Q. That would be one instance then where conditions were not equal?

A. That is one. And the buyer in ninety nine cases out of
1308 a hundred will favor people that he knows or concerns that he knows if he can get the right prices. There are so many things that I could say, little things that I cannot think of just now. I would rather not try to go it further unless you want it.

Q. It gets to one practical result, all conditions being taken into

consideration even if the reduction should be made you could not do business in the Missouri River towns?

A. No, sir.

Q. And would not attempt to?

A. You might say competition is too strong for us there.

Recross-examination.

By Mr. FYFFE:

Q. These several reasons that you have given why it would be difficult or impossible for the New York jobbers in your line to compete with the jobber in say Chicago or St. Louis are all reducible to the geographical fact of nearness to the market which the Chicago or St. Louis jobber is supplying?

A. It isn't all reduced to that one point.

Q. Saving of time by the purchaser is another result of nearness to the market isn't it?

A. That is important.

Q. The buyer you state will favor people he knows if the prices are good?

A. Concerns I mean.

Q. I mean concerns?

A. Yes.

1309 Q. That arises from propinquity of market does it not?

A. Yes, sir, that is important.

Q. When you say the competition out there is too strong you do not mean by that to say that they are more active out there than you are here?

A. I mean that they are just as active, and they are larger in proportion, they are ten times as large as we are, or twenty times.

Q. Who are?

A. The western jobbers.

Q. You mean that the western—

A. The average western jobber.

Q. Is a bigger house?

A. Immense line compared to ours. Ours is like a stone in the ocean.

Q. You are speaking of houses like the Simmons Hardware Company?

A. Simmons Hardware Company, Hibbard Spencer & Bartlett. They are tremendous concerns.

Q. That element of doing business on a big scale gives them a natural advantage over persons who are doing business on a smaller scale?

A. It gives them this advantage, that they can buy enormous quantities, and get a reduction, where we buying in smaller quantities naturally have to pay more.

Q. Those two advantages, the advantage of nearness from which these two or three other things come, and the advantage of purchasing in big lots are the principal differences which makes it impossible for you to compete out there are they?

1310 A. In my mind they are, from our experience. We even went as far as to pay the freight in order to try to get the business.

Q. Yet these elements were too strong against you?

A. Those were the two important ones. It shows to my mind that the freight will not help our business.

Q. Would you favor a still further reduction in favor of New York which would enable the New York merchant successfully to compete against these advantages, natural advantages, which the Chicago or St. Louis jobber has?

Objected to by Mr. Webster for the reason that it is not proper cross examination of any matter inquired of on direct examination, and second, it is not related to any issue involved in this suit.

A. I do not think I want to answer that.

Q. If the witness cannot answer I would like to have him say so.

A. I do not care to answer it. I cannot answer it right because I don't know.

Q. Of course what I asked you was whether you would favor as a matter of fairness to the New York jobber a change in the rates that would enable the New York jobber to meet that competition out there?

Objected to as before.

A. No, I do not want to answer that.

1311 Q. May I ask you if you mean you have a reason but do not wish to give it or that you cannot answer?

A. I cannot answer it intelligently.

1312 CHARLES H. JONES, a witness produced, sworn and examined on behalf of the defendant intervenors, deposed as follows:

Direct examination.

By Mr. WEBSTER:

Q. Give us your full name?

A. Charles H. Jones.

Q. Your place of residence?

A. My business headquarters Boston Massachusetts.

Q. You may state what your business is?

A. I am a manufacturer of shoes. I am President of the Commonwealth Shoe & Leather Company manufacturers of shoes.

Q. How long has that company been engaged in that business?

A. Since 1884.

Q. In a general way you may state how extensive that business is, not to go into any detail about it?

A. We are among the larger manufacturers in Massachusetts and our business extends over the whole country from Maine to California and Minnesota to Texas.

Q. You may state what relation you may sustain to any association of the persons representing your line of business in New England?

A. I am the Chairman of the Traffic Committee of the New England Shoe & Leather Association which embraces all the important houses in New England in the manufacture of shoes. I am chairman of the Transportation Committee of the Boston 1313 Merchants' Association.

Q. By virtue of those positions have you had special occasion to pay attention to the question of railroad rates as affecting the business of the boot and shoe industry throughout the United States?

A. Yes, sir, I have at considerable length.

Q. Likewise in that connection have you had occasion to inform yourself as to the places where tanneries are located and where leather is produced in the United States?

A. Yes, sir, leather that is used in the class of goods that I manufacture is made largely in Milwaukee Wisconsin, more than any other one point. That is upper leather, calf skins.

Q. You may state in a general way how rapid has been the development of that business in the western states in the last few years?

A. Formerly, I should say perhaps twenty years ago, practically all of the leather of that character that was used in New England was made in New England or in that vicinity. Today I believe there is absolutely no sole leather made in New England at all. I think that has been wholly transferred to the west and the near southern states like Kentucky, Tennessee, West Virginia and North Carolina and to some extent western Pennsylvania is a very large tanning center now. I know of no sole leather tanneries at 1314 all in New England. The kid leather the largest tannery is in the vicinity of Wilmington Delaware and Philadelphia.

Q. State what the fact is as to where the New England boot and shoe manufacturers go for their sole leather and for their upper leathers?

A. We buy our sole leathers very largely of Cincinnati, American Oak Leather Company of Cincinnati. Also from some of the tanneries in North Carolina, some in Western Virginia and some in Wisconsin.

Q. I assume as a matter of course in the purchase of raw material that you in some manner or other pay the freight on that material from the place or source of supply to your factory in New England?

A. We unfortunately have to. It is frequently absorbed by the dealer and put on to the price, but the result is the same. Although Boston still claims to be the largest leather market in the world it is not the cheapest. Leather is sold today cheaper in Chicago than in Boston, on account of the nearness of Chicago to the tanneries.

Q. How would that be as to St. Louis?

A. Of course St. Louis is nearer Chicago than Boston and the rate from St. Louis to Chicago is cheaper than the rate from Chicago to Boston, and consequently St. Louis has an advantage in the price of leather over Boston or any New England points.

Q. In shipping your manufactured product west as far as 1315 St. Louis you have to pay the freight I suppose on your manufactured product?

A. Yes, that is adjusted in some ways. Sometimes we pay it and sometimes our customers pay it.

Q. In the end it comes out of the goods?

A. In the end it is added to the cost of the goods.

Q. That being so a house in St. Louis gets its raw material cheaper than you do?

A. Yes, sir.

Q. And doesn't have any freight to pay from Boston out to St. Louis on the manufactured product?

A. That is quite right. That is exactly the fact.

Q. Do you know of the house of Robert Johnson Rand Shoe Company in St. Louis?

A. Yes, sir, I know them very well. I sold goods to them for many years.

Q. Do you know Mr. Jackson Johnson of that company?

A. Very well indeed.

Q. I want to ask you to state in a general way what advantage such a house as that of Robert Johnson Rand Shoe Company has over your house or like houses in New England in the sale of goods west of the Missouri river and you may state in your own way the extent of that advantage?

A. They have at the present time every conceivable advantage except perhaps the superiority in the skill of the New England shoemaker. Except that they have every advantage.

1316 Mr. FYFFE: I object to the answer as not responsive and as dealing entirely in a matter of conclusion.

The WITNESS: They have the advantage in nearness to the supply of raw material. They have the advantage in vicinity to the market where the goods are used, consumed. They have the advantage of more liberal laws in regard to the employment of labor. They have the advantage of a lower scale of wages in their manufacturing establishments. They have the advantage of unlimited nerve and that I suppose is a natural advantage that we cannot particularly criticise them for.

Mr. WEBSTER:

Q. Do they not have the advantage of the freight rate say from the seaboard out to St. Louis?

A. They have an advantage in freight rate in proportion to the distance that their raw material comes as compared with ours and also the fact that our finished product must pay the freight clear to its destination and they are practically at its destination when they start.

Q. Take St. Louis as the destination for the moment, the first class rate from the Atlantic seaboard to the city of St. Louis is 88 cents per hundred. Let me ask you whether boots and shoes take the first class?

A. Yes, sir.

Q. So a house like Roberts Johnson Rand Shoe Company in St. Louis would have an advantage over you of 88 cents per 1317 hundred on the manufactured product?

A. Yes, sir.

Q. And the additional advantage whatever that may be of the lesser freight on the raw material?

A. Yes, sir.

Q. Assuming that the rate from the Atlantic seaboard to the Missouri river cities such as Omaha, St. Joseph and Kansas City is \$1.48 per hundred pounds, and the order of the Commission reducing that rate 9 cents per hundred pounds, I ask you to state in your opinion whether that reduction of 9 cents per hundred pounds first class would or would not operate to any disadvantage to a house in St. Louis such as Roberts Johnson & Rand Shoe Company so as to have any deterrent effect upon the business of that house?

A. I cannot see that it would in the slightest degree.

Q. To go back a little and call your attention to a few things stated by Mr. Johnson. Among other things I call your attention to the fact that he stated in his testimony in effect that the main competitors of Roberts Johnson Rand Shoe Company of St. Louis are in the seaboard territory. I will ask you to state what the facts are within your knowledge on that subject?

A. That is wholly impossible. The competitors of Roberts Johnson & Rand Shoe Company, the principal ones, are in St. Louis.

Q. I want to call your attention to another bit of evidence by Mr. Jackson Johnson to the effect that if this order reducing the 1318 rate from the Atlantic seaboard to the Missouri river went into effect it would put that company to a disadvantage in every manufacturing point of importance in their line of business and ask you to state what the facts are as to that?

The WITNESS: Do I understand your statement to be that he said that the reduction in rate would put St. Louis at a disadvantage with every other manufacturing center where shoes were made?

Mr. WEBSTER: Every other manufacturing points of importance.

The WITNESS: Where shoes were made?

Mr. WEBSTER: Yes, sir.

The WITNESS: I cannot conceive of any reason for such a statement, because St. Louis is geographically nearer the market that he reaches than any of these other important shoe manufacturing centers; and the rate from St. Louis to these other points where his shoes are marketed must be less than it is from any other point. I do not know how it compares with Portsmouth Ohio or with New York State, Binghamton New York, or Boston Massachusetts, but naturally it must be less because it is very much nearer. If it is less as I suppose, then this reduction unless it made the rate from Boston less than the rate from St. Louis could not interfere with him in any way.

Q. I desire to call your attention to another fact, to wit, 1319 that Mr. Johnson said in effect that if this reduction in rates went into force it would place his house at a disadvantage in about 70 per cent. of its business. I will ask you what the facts are as to that so far as your knowledge goes?

A. I cannot conceive of its putting his house at a disadvantage in any respect at all. I cannot understand what was in the man's mind in making that statement. I cannot see anything in it. I think I know the locality where he sells his goods and I think that he has an advantage in that region and would maintain it in that region if this rate were reduced five times as much as they talk about reducing it. If the rate from Boston for instance was 25 cents a hundred to the Missouri river we could not interfere with Mr. Johnson's business in those points.

Q. In a general way you may give your reasons for that statement?

A. This concern in St. Louis has so many other advantages that New England could in no way offset, that he would still hold the business if the freight rate from Boston was 25 cents. We sold these people in St. Louis formerly, before they had their factories, practically all the goods that they used of our kind of goods. Today we sell them nothing at all except things they cannot make. No freight rate would overcome the other manifest advantages

1320 that they have. It might be an assistance to the Missouri River people in paying the freight on our stuff that they cannot buy in St. Louis, but just as fast as St. Louis develops its factories so that it can make these various kinds of goods they will take that business away from us too.

Q. You might state what has been the effect in the last ten or twenty years upon the boot and shoe business of New England by reason of the development of these western industries in a similar line?

A. You may take the cities of Chicago, St. Louis, Kansas City and Omaha and, I did not prepare myself with any statistics, but I will say roughly they are manufacturing today fifty million dollars a year worth of shoes that fifteen years ago were all made in New England; and that business can never come back to New England. It is just as much a fixture out there as if it originated and grew there, and will continue to increase, while New England will be very fortunate if it holds what it has got left. It is inevitable. I may say that an article of goods like shoes where they develop the machinery now so that skilled hand labor is not necessary, will go to the localities where the shoes are used. You cannot help it. We have got today several very large factories in the state of Virginia where ten years ago the idea of shoemaking, manufacturing at wholesale in Virginia would have been considered ridiculous. They are manufacturing millions of dollars worth of shoes there today. That business has gone there to stay. It came from New England. It is because the market is there. We have no advantage that enables us to overcome the advantage they have got from their vicinity to the market.

Q. I would like to call your attention to another statement made by Mr. Johnson to the effect that his house manufactured a shoe called Star Common, of which they are probably making a thousand pairs a day and do not make a cent of profit on them. What have you to say to that?

A. I presume that is true. If they do not make any profit on them it is because they do not know how to make the shoe right. They are learning the trade. It is a new business with them. They have only been at it six or seven years. They have made wonderful progress but this low priced shoe is a shoe that takes considerable skill and experience to be able to save in the little things the items of expense that are essential in a shoe at that price. If they are not making any money on them it is because they don't know how to make them. They are learning the trade and paying for their experience.

Q. Generalizing a little more, I wish to call your attention to the fact that Mr. Crosby, Traffic Manager of the Chicago Burlington & Quincy Railway Company testified in effect that if this reduction went into effect it would have the effect of interfering with the commercial business of St. Louis and Chicago and would have a tendency to drive the business of those cities to the Atlantic seaboard. I will ask you what your opinion is on that question?

A. As far as shoes are concerned, which is the only commodity I claim to have any knowledge of, such an effect as that would be impossible to discover. I cannot see any reason or any way in which it would occur. Of course a rate 9 cents less would do no harm to a manufacturer on the seaboard but it would not be a factor of sufficient importance to make him sell one pair more or less of shoes in that territory, and there would have to be other reasons beyond that to make any change at all.

Q. I desire to call your attention further to Mr. Eyman speaking for the Chicago & North-Western system who testified in effect that if this reduction of rates went into force it would be disastrous to the commercial interests of Chicago and St. Louis?

A. As far as shoes are concerned I will tell you what the fact is. A buyer in Kansas City or any Missouri river point considering the purchase of shoes in Boston as compared with the purchase of shoes in Chicago, if he took the freight rate into consideration at all, which he probably would if he was a careful merchant, would consider the rates as between those two cities. That is to say whether the rate from Boston was the more or whether the rate from Chicago was the more, and of course as the rate from Boston is very much more such a small reduction as this I do not think would make any difference at all. I do not think it would affect the sale of a single pair of shoes one way or another. It would have to be reduced very much more than this to make any perceptible effect.

Q. Do you know of the New England Board of Transportation?

A. Yes, sir.

Q. I believe that is one of the associations——

A. That is one of the departments of the Merchants Association of Boston.

Q. What does it represent?

A. It represents the transportation interests of all the commercial bodies in New England.

Q. Were you present at a meeting of that body lately held?

A. Last Tuesday, I was.

Q. I call your attention to a publication which appears in a Boston paper under date of April 13, 1909, to wit, a series of resolutions purporting to have been adopted at such meeting, and ask you to state if you were present at that meeting?

A. Yes, sir, I was.

1324 Q. You may state who were represented at that meeting and how extensive was the representation?

A. This article will show. There were representatives there from every important commercial body in the New England states, Maine to Rhode Island, Connecticut, Vermont, Massachusetts, New Hampshire and the whole thing. They were there by invitation to consider the matter of doing away with New England west bound differentials, invitation by the Merchants' Association, and they assembled there one hundred and seventy five of them altogether, being three representatives from probably every important trade body in New England.

Q. Do you have personal knowledge whether these resolutions which appear in the newspaper which I hand to you were in fact adopted at that meeting?

A. Yes, sir, I have. I heard them offered and heard them discussed and heard the vote that adopted them.

Mr. FYFFE: Counsel for the complainants objects to the question and answer and the copy of the resolutions, on the ground that the matter in question is irrelevant, immaterial, incompetent and foreign to any issue made in this case, and not the best evidence.

Mr. WEBSTER:

Q. You may state what the fact is as to whether these resolutions, before they were adopted, were the subject matter of an extensive discussion?

1325 A. Yes, sir. It was pointed out that this action of the Interstate Commerce Commission had been taken, that is reducing the rates to the Missouri river points, and that some objection had been interposed, and that a temporary injunction had been issued restraining the Interstate Commerce Commission from putting these rates into effect, and it was brought out in the discussion that the general sense of the meeting was that the reduction was wholly inadequate, that it was insufficient to do New England much of any good, but so far as it went it was all right and we ought to do what we could to sustain it and secure if possible a further reduction.

Q. What is the fact when the vote came if you know as to whether these resolutions were unanimously adopted or otherwise?

A. Yes, sir, they were. There was no objection.

Mr. FYFFE: The same objection to all this line of questions.

Mr. WEBSTER: Has that body that adopted these resolutions officers such as President and Secretary?

A. This New England Board of Transportation is a department of the Merchants' Association. The Merchants' Association has regular officers and this department had a Chairman.

1326 Q. Who is the chairman of this department?

A. Mr. D. O. Ives.

Q. Is he the same person who was formerly General Traffic Manager of the Wabash Railroad Company?

A. Yes, sir, the same man.

Q. He is now since he severed his connection with the Wabash Railroad Company, holding what railroad position in New York?

A. Chairman of the Classification Committee of the Trunk Line Association I believe, some such title as that.

Q. Do you know whether or not he was present at this meeting?

A. He was.

Q. And he is the chairman of that department.

A. He is chairman of that department.

Q. And of the general organization of which this is a department who is the chairman?

A. Mr. James J. Storrow of Lee Higginson & Company. He was present.

Q. The resolutions which I present to you, in the newspaper publication, can you say they are a correct copy of the resolutions which were offered and adopted at that meeting?

A. Yes, sir, that is correct as offered and as adopted.

Mr. WEBSTER: The intervenors offer in evidence the newspaper publication of the said copy of the resolutions identified and testified to by the witness as being correct, with the statement
1327 that if objection be made thereto on the ground that this is a newspaper copy we will procure a certified copy of the resolution, but if this newspaper publication be accepted in lieu of a duly certified copy we tender it subject to the right of the adverse party if they hereafter find there is any inaccuracy in it to have correction made.

Mr. FYFFE: On behalf of complainants the introduction of this resolution is objected to on the ground that it is irrelevant and immaterial and not pertinent to any issue in this case.

The said newspaper publication is as follows:

"Whereas, there is pending before the United States courts a case involving through rates between Atlantic seaboard territory (including New England) and Missouri river cities, and

Whereas, the record shows that evidence has been given by western shippers to the effect that such a reduction would give the Atlantic Seaboard cities an undue advantage.

Resolved, That the New England Board of Transportation forcibly expresses its view that the reductions ordered by the Commission appear to be exceedingly slight, and to result in through rates that would be (even after the reduction) greater in comparison to the sum of the local rates to and from St. Louis than they would
1328 be in accordance with the usual custom of making through rates between different groups of large cities, and that the reduction would not result in giving New England any undue advantage as to freight rates, but, on the contrary, that New England's trade in the territory in question has suffered exceedingly by the unreasonably high basis of rates now in effect, and that it needs even

more than the reduced rates ordered by the Commission to enable it to hold a fair share of its remaining trade in Missouri river territory.

Resolved, further, That this Board and representatives of its jobbing and manufacturing interests to New York to appear at the hearing as witnesses to testify in behalf of New England interest."

Cross-examination.

By Mr. FYFFE:

Q. You have been in various lines of business, that is connected with associations of merchants and so on, and you have dealt in your own business to such an extent over the country at large that you are quite familiar with this freight rate general question?

A. I think fairly so.

Q. At least so far as it touches articles of the 1329 first and other classes?

A. Yes, sir.

Q. Do you understand where the reduction operates that is under consideration in this case?

A. Yes, sir, I understand that it operates between St. Louis and the Missouri river.

Q. It is true is it not that the rate from New York to St. Louis on first class is 88 cents?

A. That is as I recall.

Q. And that the rate from St. Louis to Missouri river points outside of this regulation is 60 cents?

A. That I do not know.

Q. It is. There is a reduction by the order of the Commission under consideration here of June 24, 1908 of 9 cents first class, reducing that 60 cent rate from the Mississippi river crossings to the Missouri river cities from 60 cents to 51 cents?

A. That is where it is in connection with the transportation from the seaboard.

Q. Exactly and only then?

A. I understand that.

Q. And that the through rate therefore from the seaboard to the Missouri river points under the order complained of by us is on the basis of which we have been speaking \$1.39?

A. It will be now if the rate is upheld as reduced by the Commission.

1330 Q. While the locals from New York to the Missouri river in and out of St. Louis are 88 cents plus 60 cents or \$1.48?

A. That is right. I understand that.

Q. What class does your finished product of boots and shoes go in?

A. First class.

Q. What is the material that the boots and shoes we have been talking about in this testimony this morning made by you and made by the two or three St. Louis houses you speak of are made from?

A. Leather principally. Some cloth.

Q. What kind of leather?

A. All classes, sole leather, upper leather, calf skins and kids.

Q. What class of freight do those go by?

The WITNESS: Leather?

Mr. FYFFE: Yes, sir.

A. I am not sure. I think it is second class. I really could not tell you.

Q. You wouldn't say that they do not go first class?

A. No, I would not.

Q. Assuming that leather does go first class and that shoes go first class what advantage would there be to the St. Louis man in the purchase of his raw material so far as the question of freight is concerned?

A. He can get it nearer to St. Louis than we can to Boston. A large part of the upper leather that we use comes from Milwaukee. It is manufactured in Milwaukee.

Q. So the situation then is this that you in Boston in buying this part of your raw material, your leather, buy in Milwaukee and pay the rate from Milwaukee to Boston?

A. Yes.

Q. Which is a differential on the Chicago rate isn't it, or is it the same as the Chicago rate?

A. It is the same as the Chicago rate as I recollect it.

Q. Then you make up your shoes and if you are selling them out on the Missouri river you then pay at the first class rate to the Missouri river?

A. Precisely.

Q. Under the reduction you pay nine cents less?

A. Yes.

Q. In the same operation the St. Louis manufacturer buys his raw material at the same place you do?

A. Yes, sir, Milwaukee.

Q. And he pays the rate from Milwaukee to St. Louis?

A. Yes, sir.

Q. And then pays if he sells to the Missouri river, on the finished product, the rate of 60 cents between the rivers?

A. Yes, sir.

Q. The advantage then that the St. Louis man has, if it is an advantage, is that he gets his raw material from a point nearer to his factory than you do yours?

A. Yes.

Q. What other material enters into the manufacture of boots and shoes besides leather for instance that you get from Milwaukee?

A. Tacks and nails is quite an important item.

Q. Where are they made?

A. Mostly in Wheeling and Pittsburg. They are the principal points that I know of. They may be made at Cleveland and some of the other places but those are the principal points.

Q. Are they made in New England at all?

A. There is a tack factory I think at Fair Haven Massachusetts.

Q. Do you deal at all with that factory?

A. Not directly. I think they make tacks that are sold to one of the lasting machine companies and we buy the tacks of the lasting machine company. I cannot tell surely where they are made. The ones that we buy that we know where they are made come from Wheeling.

Q. In regard to these tacks the same relative advantage or disadvantage would possibly be in favor of St. Louis and possibly be in favor of you?

A. Possibly in favor of us to some slight extent.

Q. Depending entirely up the locality where the manufactory exists and the rate from that point to the place of manufacture of the boots and shoes?

A. Yes.

1333 Q. Because the freight rates enter into the cost of course?

A. Undoubtedly. It is a very important item.

Q. And has to be taken into consideration by every manufacturer?

A. Surely. That really controls in some lines of business where the business is close. The man with the cheapest freight rate ultimately gets the business.

Q. Aren't there some very large tanneries of special kinds of leather that are used in the manufacture of boots and shoes, in New England?

A. There are some few upper leather tanneries but my impression is in volume they are not comparable with the ones west. We personally buy much more in the west than in the east.

Q. Then when you have got your finished product made you sell that as I think you testified all over the country?

A. Yes, sir.

Q. Do you sell for instance down in Texas?

A. To some extent.

Q. Is that through the Mississippi gateways?

A. No, we send by water to Galveston.

Q. You gain then by sending by the water route?

A. In the coast cities, Galveston and those cities we get a fair business. When it gets back into the interior St. Louis gets the business.

Q. Then St. Louis gets the business where it gets back into the interior because of propinquity to the market?

1334 A. I suppose that is it. Do not understand me that we do not sell in the interior part. We do because we have goods that they do not make, and they naturally have to buy of us and we sell those all over the state.

Q. In the goods where you do compete you would have the advantage in the seaboard cities of the Gulf because of having the sea freight?

A. Yes, sir, by steamer.

Q. That is a natural advantage that you have by reason of your location in Boston?

A. Yes, sir.

Q. The advantage that St. Louis has by being located nearer Milwaukee is a natural advantage of position?

A. Yes, sir.

Q. You do compete with St. Louis in the same goods don't you, out in the Missouri river points?

A. Well, to some extent, but as I said practically all we sell in those points is stuff that St. Louis doesn't make successfully yet. We formerly sold everything there that we made. Now, St. Louis has taken out what it has been able to make satisfactorily.

Q. And you state in your direct examination St. Louis is trying to learn the business?

A. They are. There is no question about that. They admit it. They are beginners and nobody knows it all to begin with. Being in a favorable situation they have had that opportunity to learn.

Q. I shall be very glad if you could go into the detail if it has not been done enough, and perhaps it has, why St. Louis which
1335 you are speaking of as the biggest town in this line of boots and shoes—

A. Yes, sir.

Q. Why it is that St. Louis has advantage over the seaboard in the sale of boots and shoes. Are there any other advantages than those that you have mentioned?

A. If there are I can't think of them.

Q. You have mentioned St. Louis' advantage in the nearness to the supply of raw material?

A. Yes, sir.

Q. That is one?

A. Yes, sir.

Q. You and I have just gone into that in this cross examination?

A. Yes, sir.

Q. You have stated another advantage to St. Louis as the nearness to the market of consumption?

A. Yes, sir.

Q. In that the question is not so much of freight rates but because the consumer is likely to want to buy from his own territory?

A. It is both. The difference in freight rate between Boston and the Missouri river points, and St. Louis and Missouri river points is so marked that it could not fail to enter into St. Louis' advantage to some extent. I do not know that it is a controlling factor but it certainly is an advantage.

Q. Let me ask you a question in regard to that. St. Louis has to pay to get its raw material in, and I assume that that freight is on first class?

A. Yes.

1336 Q. If St. Louis got its raw material for boots and shoes in New England its nearness then to the consumer would give it no advantage in this particular over Boston would it, because it would have to pay the same freight.

THE WITNESS: You mean if it bought all its material in New England?

MR. FYFFE: Yes.

A. To carry it there and then make it into boots and shoes and

carry it to the consumer there would be no advantage over the New England jobber in regard to that one feature only.

Q. Another ground you have given is more liberal labor laws.

A. Yes, sir.

Q. Are you speaking of any particular state when you speak of that?

A. I am speaking of St. Louis. I know they have more liberal labor laws than Massachusetts.

Q. Do you mean such a thing as eight hour laws?

A. They are not limited to the number of hours and the people are worked to the same extent. They work their people more hours a week than we are allowed to in Massachusetts.

Q. You say that the wages paid in manufacturing establishments at St. Louis and Chicago are less?

A. They are said to be less. We are told that they are less.

1337 Q. You do not know the details of that of your own knowledge?

A. I have had machine operators and foreman who have left the east and gone there to work come back and give me figures showing what they paid out there as compared with what we are paying.

Q. Do they get more money?

A. They get higher rates of wages. Our labor is better organized. To illustrate, two years ago St. Louis had a big strike. The manufacturers in St. Louis simply locked up their factories and came east and bought their shoes and kept their business going and beat the strikers, forced them back at the old rates and went right ahead manufacturing again; and the rates of wages that were quoted as being paid there then were not as much as we paid in the east.

Q. You state you were present yourself at the meeting at which the resolution introduced by General Webster was adopted?

A. Yes, sir, I sat next to the man who introduced it.

Q. That resolution had a particular direction towards this Missouri river rate case that we have under consideration and are taking testimony in now?

A. Yes, we had been discussing it just before this was up.

Q. The object of that meeting was if possible to assist towards even a still greater reduction of the rates between the rivers from the seaboard?

1338 A. That was not the object for which the meeting was called. The trunk line presidents had a meeting in New York about there weeks ago at which they made the proposition that west bound differentials from New England should be abolished.

Q. That is the advantage that New York has over New England points?

A. New York happened to have a ten cent differential over the Canadian Pacific and Boston and Maine and the trunk lines objected to that and it was suggested that the whole differential business be abolished. New England enjoys a five per cent differential practically over the Canadian Pacific and the Grand Trunk president voted in our favor which was all that saved us. That naturally interested the shippers in New England some and they got together at this meeting

to see what we could do to prevent the doing away with the differential, and at that time this other matter came up and it was taken up and discussed and that resolution was passed and we were instructed to send some one to testify.

Q. This question of the New York and New England differential of ten cents and five cents is a sort of seaboard family matter with which St. Louis and Chicago have no particular interest?

A. So far as I can see they have an interest. It is our ability to get freight to our people in the west at a reasonable rate. It was raising our rate five cents in effect and we naturally objected 1339 to that.

Q. Then this other matter of the resolution in regard to the rates from the Atlantic seaboard territory to the Missouri river cities as between the rivers was then brought up?

A. Yes, sir.

Q. It is stated, Mr. Jones, in this resolution that there is needed "even more than the reduced rates ordered by the Commission to enable it (New England) to hold a fair share of its remaining trade in Missouri river territory". The object of the resolution as expressed or intimated in the part I have read is that the New England people concerned at the meeting, merchants and so on were desirous of if possible overcoming the advantages that these western towns, St. Louis and Chicago and so on, have, in regard to which you have testified, by a further reduced rate in the west from the seaboard territory?

A. Yes, sir.

Q. Their object as shown by this resolution is to meet those advantages of locality they say St. Louis has by a rate which would give the seaboard territory, to the extent of the rate, greater or less, an equalizing advantage or an advantage tending to equalize the conditions in St. Louis and the seaboard?

A. The feeling at the meeting was this, that a through rate for such a long distance as from the seaboard to the Missouri 1340 river towns, could reasonably and properly be materially lowered and in fairness and justice it ought to be, and give the people more distant more chance at competition in the distant market.

Q. That is to give the seaboard—

A. Give the seaboard some chance at competition, the difference in the rate being so large now that it is practically prohibitive if the goods are of equal quality.

Q. You have testified that in a good many articles of boots and shoes you are rather free from competition because you manufacture these articles and manufacturers in the west do not manufacture them. That is right isn't it.

A. Not exactly the same thing. There are a good many grades of boots and shoes and there are some grades that cannot be manufactured in a new community like the St. Louis manufacturing district where the help are not the most skillful in the world and not accustomed to it for long terms of years, as they have been in the east. There are certain kinds of goods that they can manufacture more easily than others and they naturally take the ones that they

can manufacture easily and our sales are limited practically to the ones they cannot readily produce.

Q. So that practically in these articles you have very little competition?

A. No, we have competition. Chicago makes them. Chicago manufacturers are more skillful than the St. Louis men.
1341 They have been longer at it.

Q. Selz Schwab Shoe Company?

A. Tilt Shoe Company and J. P. Smith. Selz makes good goods. Florsheim in Chicago has an excellent manufactory and manufactures as good goods as New England. St. Louis people have not been as long in the business and cannot go to the Missouri river and beat us on our exclusive sale. On the other sales they do.

Q. In the view of the gentlemen who are proposing to adopt this resolution would you say—

A. This you understand applies to other merchandise outside of shoes.

Q. Yes I understand that. Would you say that you would be entitled to a lower through rate from the seaboard to Missouri river towns in these articles in which in regard to St. Louis at least you can successfully compete?

A. Yes, we think that the roads can afford to haul freight a longer distance at a lower rate proportionally. We feel that it would be good policy to have it so that that community may have an opportunity to buy wherever it likes and we may have the opportunity to sell wherever we can.

Q. Are you aware that the Mississippi river for a great number of years perhaps has been what is called a breaking point of rates?

A. I understood the breaking point used to be at Buffalo and afterwards moved to Cleveland and afterwards moved west to Chicago and afterwards to St. Louis.

1342 Q. The Mississippi river has always been a breaking point?

A. I presume so.

Q. Are you also aware of this fact that there is no railroad from the seaboard territory which crosses the Mississippi river and goes through on its own rails to the Missouri river cities?

A. I was under the impression there were none. I do not know that. I do not consider that is of any consequence because the freight they may have to carry they simply switch around.

Q. We have a great deal of testimony on that point how that is done in this case?

A. You probably know more about it than I do.

Q. At all events you are aware of the fact that the rails of the eastern roads with the exception of the Wabash go up to St. Louis or the Mississippi River and stop there and new western roads commence going west from there?

A. That is what I have understood. I do not have expert knowledge of that at all.

Q. You are not in any way an authority, from your own standpoint, in matters of railroad operation, so as to determine whether

or not the through rate should be less than the sum of the locals, depending on the question of terminal charges and so on?

A. I do not claim to have any expert railroad knowledge whatever, no, sir.

1343 Q. In these articles in which you deal, in which you have somewhat the better of the St. Louis manufacturer by reason of the greater skill of your manufacture, in making the boots and shoes of this particular character, do you sell those to jobbers in St. Louis?

A. Yes, to some extent. We sell the Hamilton Brown Shoe Company for instance. We sell Roberts Johnson Rand also some. Our business is very limited with them now. It used to be very large. As far as they can they make everything and cut us out.

Q. I want to direct your attention just to those articles which you sell to the St. Louis jobbing houses. The St. Louis jobbing houses will sell those articles to the Missouri river cities?

A. Yes, sir. As a matter of fact they do not sell them much to the cities. They do some. They sell them to the country towns back of there.

Q. In getting these goods from you from the seaboard and in sending them out to the Missouri river cities or the territory adjacent thereto they pay the freight rate of 88 cents into St. Louis and 60 cents out?

A. Yes, sir.

Q. You if you are selling direct to the Missouri river cities would also now as things are today pay first class the same rate, that is the sum of these two locals or \$1.48?

A. Yes, sir.

1344 Q. In a case like that, which is somewhat different from the others we have talked about, St. Louis would have no advantage over you by reason of its nearness to the place of supply?

A. They have an advantage over us but not an advantage in freight. They have lots of other advantages. Nearness to their market, intimacy with their trade, lack of expense for their traveling men and all that class of advantage.

Q. So far as the mere freight question is concerned would you consider that you were entitled to a lower through rate so as to give the advantage to yourself or the Missouri river merchant over the St. Louis man in the purchase of merely those articles?

A. We should feel this way, that if the roads could afford to haul the through traffic at a lower rate we were entitled to that lower rate to offset the other advantages which they have as far as it would be possible to do it in the matter of transportation.

Q. And the other advantages that you speak of which you would be entitled to offset in that way would be these advantages of intimacy with the people, less expense in traveling and so on?

A. We formerly had eighteen or twenty first class jobbing houses in the city of Boston jobbing shoes in that territory. Today there is not one, because the advantage in traveling expense and the

1345 nearness to the market and all those things are so strong in favor of St. Louis and Chicago that the eastern men could not compete, and they have gone out of business.

Q. That is simply a commercial advantage that is universal in any kind of business in any part of the world?

A. Yes, you set up a first class competitor between you and your customers and you might as well take to the woods. That is where you have got to go.

Q. That is a universal condition?

A. Yes, sir.

Q. That must be the effect in Europe or this country?

A. Yes, any other country so far as I know. I don't know anything about conditions outside of this country. I know of this condition that when St. Louis and Chicago developed their wonderful strength as jobbing centers, that is when they got so large and found such an immense and wealthy territory tributary to them so that their jobbing business has got larger than the jobbing businesses of the east they immediately cut off all the business from the cities in the east and took it to themselves.

Q. Your idea and the idea of the gentlemen who are behind the resolution was to make an effort to equalize or reduce the advantage by getting a lower freight rate?

A. We believed that a long haul is cheaper than a short haul. If it is cheaper they having so many natural advantages we
1346 ought to have all the other advantages that are fairly belonging to us.

Q. The object of this resolution was to seek to equalize those advantages or rates perhaps the better word is, and by a difference in the freight rate?

A. Yes, sir. We considered the difference in the freight rate just as natural an advantage to us as those are natural to the other fellow. That is the long haul can be hauled cheaper we have been told, and we want that benefit.

Q. But you have these matters whether long or short haul that are questions of railroad operation and railroad expense you do not pretend to have any knowledge of your own?

A. No, sir, I do not.

Adjourned.

1347 On May 21, 1909 at ten o'clock A. M. the parties met by agreement at the office of Colin C. H. Fyffe, Esq., in the New York Life Building in Chicago Illinois.

Mr. WEBSTER: The intervenors Burnham, Hanna, Munger Dry Goods Company et al offer in evidence a table taken from the United States Census reports of 1900.

The said table was received in evidence and was marked "Defendant Intervenors' Exhibit 15".

It here follows:

1348

DEFENDANT INTERVENORS' EXHIBIT "15."

Table of Data Taken From United States Census Reports of 1900 Tending to Show that Chicago and St. Louis are Not so Dependent on Importations From Atlantic Seaboard that a Reduction on Class Rates From Atlantic Seaboard to Omaha, St. Paul, and Kansas City Would be Disastrous to Chicago and St. Louis.

Farm products:

		Value.
Iowa.....	1900	\$360,000,000
Illinois.....	1900	345,000,000
Ohio.....	1900	255,000,000
New York.....	1900	240,000,000

Number swine on farms and ranges:

Iowa.....	1900	9,500,000
Illinois.....	1900	6,000,000
Missouri.....	1900	4,500,000
Nebraska.....	1909	4,000,000
New York.....	1900	700,000

Number of cattle on farms and ranges:

Texas.....	1900	9,500,000
Iowa.....	1900	5,400,000
Kansas.....	1900	4,500,000
Nebraska.....	1900	3,200,000
Illinois.....	1900	3,100,000
New York.....	1900	2,600,000

1349 Number of sheep on farms and ranges:

Montana.....	1900	6,200,000
Wyoming.....	1900	5,000,000
New Mexico.....	1900	4,900,000
Ohio.....	1900	4,000,000
New York.....	1900	1,800,000

Production of wheat, 1900:

Minnesota.....	Bushels...	95,000,000
North Dakota.....	" ...	60,000,000
Ohio.....	" ...	50,000,000
South Dakota.....	" ...	42,000,000
California.....	" ...	36,000,000
Indiana.....	" ...	35,000,000
Nebraska.....	" ...	24,000,000
Missouri.....	" ...	23,000,000
Illinois.....	" ...	20,000,000
New York.....	" ...	10,000,000
The above out of a total in U. S. of.....		650,000,000

Production of corn, 1900:

Illinois.....	Bushels...	400,000,000
Iowa.....	" ...	380,000,000
Kansas.....	" ...	230,000,000
Nebraska.....	" ...	210,000,000
Missouri.....	" ...	208,000,000
Indiana.....	" ...	180,000,000
New York.....	" ...	20,000,000
Out of total in U. S.....		2,700,000,000

1350 Production of oats, 1900:

Illinois.....	Bushels...	180,000,000
Iowa.....	" ...	168,000,000
Wisconsin.....	" ...	82,000,000
New York.....	" ...	41,000,000
Out of a total in U. S. of.....		950,000,000

Production of barley, 1900:

California.....	Bushels...	25,000,000
Minnesota.....	" ...	24,000,000
Wisconsin.....	" ...	19,000,000
Iowa.....	" ...	18,000,000
New York.....	" ...	3,000,000

Production of tobacco, 1900:

Kentucky.....	Pounds...	310,000,000
North Carolina.....	" ...	130,000,000
Virginia.....	" ...	120,000,000
New York.....	" ...	None.

Agricultural implements, 1909:

Illinois.....	Value...	\$42,000,000
Ohio.....	" ...	14,000,000
New York.....	" ...	11,000,000

Flour & grist mill products, 1900:

Minnesota.....	Value...	\$83,000,000
New York.....	" ...	43,000,000

1351 Slaughtering & meat packing, 1900:

Illinois.....	Value...	\$286,000,000
Chicago.....	" ...	246,000,000
New York State.....	" ...	58,000,000

Lumber & lumber products, 1900:

Wisconsin.....	Value...	\$57,000,000
Michigan.....	" ...	54,000,000
Minnesota.....	" ...	43,000,000
New York.....	" ...	16,000,000

1352 The complainants and intervening complainants object to the said table as incompetent, irrelevant and immaterial but make no objection upon the ground that no formal proof has been offered that the figures are correct as shown by the census reports.

The said defendant intervenors next offer in evidence a table of data taken from the government reports of the Department of Agriculture and the same was marked "Defendant Intervenor's Exhibit 16," and here follows:

1353 DEFENDANT INTERVENORS' EXHIBIT "16."

Table of Data Taken From Reports of United States Department of Agriculture.

Bulletin No. 64.

Farm animals:

		Value.
Illinois.....	1907	\$319,968,115
Iowa.....	1907	369,238,955
Missouri.....	1907	221,982,178
Wisconsin.....	1907	148,105,239
Nebraska.....	1907	221,397,786
Kansas.....	1907	227,561,166

Bulletin 64.

Horses:

		Value.
Illinois....	1907	\$171,990,000
Iowa.....	1907	139,178,490
Missouri	1907	87,937,525
Nebraska.....	1907	86,362,944
Kansas.....	1907	96,848,928

Bulletin No. 64.

Cattle other than milch cows:

		Value.
Illinois.....	1907	\$49,238,170
Iowa.....	1907	90,288,000
Missouri.....	1907	45,950,490
Nebraska.....	1907	65,367,720
Kansas.....	1907	73,844,591

1354

Bulletin No. 64.

Swine:

		Value.
Illinois.....	1907	\$37,377,522
Iowa.....	1907	81,552,750
Missouri.....	1907	24,530,154
Nebraska.....	1907	35,496,000
Kansas.....	1907	21,001,840

Bulletin No. 57.

Wheat crop of 1906:

		Bushels.
Illinois.....	1906	38,535,900
Minnesota.....	1906	55,801,591
Missouri.....	1906	31,734,900
North Dakota.....	1906	77,896,000
South Dakota.....	1906	41,955,400
Nebraska.....	1906	52,288,692
Kansas.....	1906	81,830,611

Bulletin No. 56.

Corn crop of 1906:

		Bushels.
Illinois.....	1906	347,169,585
Iowa.....	1906	373,275,000
Missouri.....	1906	228,522,500
Nebraska.....	1906	249,782,500
Kansas.....	1906	195,075,000

1355

Bulletin No. 58.

Oat crop of 1906:

		Value.
Illinois.....	1906	\$107,763,500
Iowa.....	1906	140,777,000
Nebraska.....	1906	72,275,000
Kansas.....	1906	24,780,000
Wisconsin.....	1906	91,630,000
Minnesota.....	1906	72,011,160

Bulletin No. 63.

Hay crop for 1906:

		Tons.
Illinois.....	1906	2,585,274
Wisconsin.....	1906	3,105,000
Iowa.....	1906	4,725,000
Missouri.....	1906	2,128,112
Nebraska.....	1906	1,890,000
Kansas.....	1906	2,206,917

1356 The solicitors for the complainant and intervening complainants object to the said table as incompetent, irrelevant and immaterial but make no objection upon the ground that no formal proof has been offered that the figures are correct as shown by the said Government reports.

The defendant intervenors next offered in evidence a table of data taken from the United States Census Bulletins showing data for the year 1905, and the same was marked "Intervening Defendants' Exhibit 17," and here follows:

1357 DEFENDANT INTERVENORS' EXHIBIT "17."

Table of Data from U. S. Census Bulletins, Showing Domestic Business Conducted at Chicago and Other Places Named.

Census Bulletin No. 83.

Slaughtering & Meat Packing:

	Value.
Chicago, 1905	\$269,581,486
East St. Louis, 1905.....	39,972,245
St. Louis, 1905.....	17,485,393

Census Bulletin No. 78.

Iron and Steel Products for 1905:

	Capital invested.	Number of employees.	Value of products.
Illinois	\$58,595,150	19,658	\$87,352,761

Census Bulletin No. 57.

Manufactured Products for 1905:

	Value.
Chicago, Ill.	\$955,036,277
St. Louis, Mo.	267,307,038
East St. Louis, Ill.	37,586,198

Census Bulletin No. 75.

Agricultural Implements, 1905:

	Value.
Illinois	\$38,412,452
Wisconsin	10,076,760
Iowa	2,692,212
Kansas	395,262
Minnesota	2,885,055
Missouri	1,068,008
Nebraska	46,000

1358

Census Bulletin No. 57.

Manufactured Products, 1905:

	Capital invested.	Number of employees.	Value.
Chicago, Ill.	\$637,743,474	282,260	\$955,036,277
St. Louis, Mo.....	265,936,570	94,079	267,307,038
East St. Louis, Ill.	19,909,166	7,859	37,586,198

Census Bulletin No. 77.

Lumber & Timber Products, 1905:

	Value.
Illinois	\$6,016,586
Iowa	7,784,079
Minnesota	28,953,854
Missouri	8,021,437

Census Bulletin No. 57.

Manufactured Products for 1905:

	Value.
Illinois	\$1,410,342,129
Iowa	160,572,313
Kansas	198,244,992
Minnesota	307,858,073
Missouri	439,548,957
Nebraska	154,918,220
Wisconsin	411,139,681

1359 The solicitors for the complainants and intervening complainants object to the said table as incompetent, irrelevant and immaterial but make no objection upon the ground that no formal proof has been offered that the figures are correct as shown by the said census bulletins.

The defendant intervenors next offered in evidence a table compiled from the annual records of the Chicago Board of Trade for the year 1907 and the same was marked "Defendant Intervenor's Exhibit 18", and here follows:

1360 DEFENDANT INTERVENORS' EXHIBIT "18."

Data Taken From the Annual Report of the Chicago Board of Trade for 1907, Showing Amount of Business Done in Chicago in Certain Industries in Nowise Dependent Upon Importations From the Atlantic Seaboard.

Chicago Board of Trade.

Board of Trade Report for 1907.

Chicago Receipts of Wheat, Corn, Oats, Rye and Barley.

	During year 1907.	307,246,141 Bushels.
Shipments.....	" " "	228,609,846 "
Wheat received.....	" " "	24,943,690 "
" shipments.....	" " "	24,314,892 "
Corn received.....	" " "	125,159,932 "
" shipments.....	" " "	95,770,779 "
Oats received.....	" " "	93,906,776 "
" shipments.....	" " "	68,897,313 "

Hogs received.....	During year 1907.	7,717,280
" shipments.....	" " "	1,711,902
Packing and used.....	" " "	6,092,159
Valuation Hogs received...	" " "	\$102,918,041

Receipts of Sheep.....	" " "	4,218,111
Sheep shipped.....	" " "	1,148,724
City consumption...	" " "	3,069,391
1361 Receipt of Cattle.....	1907...	3,305,314
Shipments of Cattle.....	" ...	1,148,724
Value Cattle received.....	" ...	\$173,326,738

Total Cattle, Hogs, Sheep, and Horses received at Union Stock Yards.....	1907...	15,248,479
Valuation.....		\$19,202,239

Shipments of Dressed Beef... ..	1907...	931,533,601 Pounds.
Shipments of Lard.....	" ...	393,629,530 "

"The grain, provision and live stock business here transacted, constitute the foundation of Chicago's growth, even as the agricultural resources of the entire country are the basis of the nation's wealth." p. XXVI.

Receipts of Lumber.....	1907...	2,479,458,000 Feet.
Shipments of Lumber.....	" ...	977,746,000 "

Receipts of Shingles.....	1907...	518,112,000
Shipment of Shingles.....	" ...	518,112,000

1362 Cheese received.....	1907...	
By C. & N. W. R. R.....	" ...	25,058,254 Pounds.
B. C., M. & St. P. Ry.....	" ...	22,441,460 "
By Illinois Central.....	" ...	12,463,785 "
Shipped out by Easter- Lines.....	" ...	25,912,306 "
Wabash R. R.....	" ...	15,543,426 "
Illinois Central.....	" ...	11,804,900 "

Chicago Received.....	1907.	Sec. p. 2.
Barrels of Flour received.....	1907...	9,435,311
From Eastern lines only.....	1907...	48,124

Bushels wheat received.....	1907...	24,943,690
From Eastern lines only.....	" ...	106,855

Bushels of Corn received.....	1907...	125,159,932
From Eastern lines.....	" ...	650,917

Flour Manufactured in Chicago Mills..	1907...	1,000,000 Barrels.
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Elevator Business.

Chicago, 13 Elevators. Capacity.	22,500,000 Bushels.
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1363 "By Co-operating with the St. Louis Exchange, whose interests were as seriously disturbed as our own, we succeeded in getting from eastern and western lines the recognition of the principle that rates from Missouri River to all Atlantic ports via Chicago, Peoria or St. Louis would be made on the basis of local rates into, the flat open rates out of those cities, thus preventing the re-establishment, with all its evils, of the pro rate theory."

p. XL.

1364 The solicitors for the complainants and intervening complainants object to the said document as incompetent, irrelevant and immaterial but make no objection upon the ground that no formal proof has been offered that the figures are correct as shown by the said annual report of the Chicago Board of Trade.

The defendant and the defendant intervenors thereupon rested and the complainants offered the following evidence in rebuttal:

1365 EDWARD B. BOYD, was recalled and further testified as follows:

Direct examination.

By Mr. McHUGH:

Q. You have already testified in this case?

Mr. WALTER: The Interstate Commerce Commission makes the same objection to Mr. Boyd's testimony on rebuttal as was made before, that under the issues in this case and especially under the testimony of the intervening defendants there is no further evidence admissible. The intervening defendants' testimony is not material in the case and therefore there is no further testimony competent.

A. Yes, sir.

Mr. McHUGH:

Q. You heard the testimony of Mr. McVann to the effect that where rates were made over several railroads the general practice was that the through rate was less than the sum of the rate in and out of the terminals included in the long haul?

A. I did.

Q. I wish you would state generally whether that is true or not?

Mr. ATWOOD: Objected to by the intervening defendants for the reason that it is not rebuttal, since it pertains to the proper method of rate making, and the customs obtaining in that regard, which were gone into in chief by the complainants, particularly
1366 by the witnesses Eyman and this witness who laid it down that the true and proper method and the one that usually obtained was a combination of locals.

It is not the custom in the territory west of Chicago and the Mississippi River as a general thing, to make rates through less than the sums of the locals other than Pacific coast points.

Mr. McHUGH: And that is true whether the rates are made on one railroad or participated in by several railroads is it?

A. Yes generally speaking.

Q. To get at the matter more in detail, I wish you would state concisely where the rates break on merchandise from the east going west?

A. I will state it amplifying the map that we filed. On traffic from points east of the Illinois and Indiana state line the rates break at the Mississippi river for points in Missouri, points in Iowa, points in Nebraska, Kansas, Wyoming, Colorado, Utah and Idaho. There are some few exceptions like the Lincoln-Fremont differential territory in Nebraska and the percentage group in Kansas, and Spokane, which is the northern corner of Idaho and which is really in what is involved as Pacific coast affected territory. The rates on the same traffic break again at the Missouri river for points in Nebraska,

Kansas, Wyoming, Colorado, Utah and Idaho, with the same 1367 exceptions. And in both cases in Nevada until the combination from Sacramento comes back. The rates break on the same traffic, that is from the east I am speaking of, at Chicago for all points in Wisconsin, at Chicago or Lake Michigan ports for all points in Wisconsin other than Eau Claire, Chippewa Falls and La Crosse, and a few points in what is known as the Milwaukee territory, which is a narrow zone about forty miles wide, running from the Illinois Wisconsin border to Milwaukee and then a strip up to Sheboygan of about ten miles wide. Those are lake ports practically. They do not break on the lake ports for that lake port. They cannot break on a point for itself. Another exception is the head of the lakes, Duluth and Ashland and so forth. They break at Chicago for all points in central and southern Minnesota, all points in South Dakota except Sioux Falls and a few intermediate points, fifteen in number, because Sioux Falls is immediately contiguous to the territory of Iowa, and is affected by Missouri river conditions. They break also on Chicago for the Missouri river excepting as to second class and to points west of the Missouri river, not excepting the Lincoln and the Fremont differential territory and the southeastern percentage group points. They break at St. Paul and Minneapolis for points in northern Minnesota, points in South Dakota, points

1368 in Montana. Then they strike the affected Pacific coast territory. On traffic originating at Chicago and in Illinois and at St. Louis and on the Mississippi river and in Iowa and in Missouri and at St. Paul and Minneapolis they break at the Missouri river for all points west thereof in the states of Nebraska, Kansas, Wyoming, Colorado, Utah, Idaho and Nevada, with the same few exceptions given previously. They break again at Denver and Colorado common points when originating at or east of the Missouri river, for all points in Colorado west of Colorado common points and for points in Utah until they are affected by the Utah rate. They break again at Salt Lake for points in southwestern Utah and for points in Nevada until you strike the Pacific coast coming back. They break at all Pacific coast terminal points such as Los Angeles, San Diego, Sacramento, San Francisco, Stockton, Portland, Seattle, Tacoma, back into the interior of Oregon, Washington, California and in Nevada, New Mexico and Arizona.

Q. That covers the rate structure as it applies to merchandise shipped west?

A. Yes, sir.

Q. Now what is the character of the rate structure of the articles produced in the west and shipped east? Take grain for instance?

A. The rates on grain from points west of the Missouri river break at Missouri river points when destined to points east thereof to and including the Atlantic seaboard. They break again on 1369 that same traffic at Mississippi river points, or I will say at

St. Louis for there are no grain markets at other points, or they break at Chicago for the same territory, and through another form Detroit, Toledo, Sandusky, Cleveland, Indianapolis, Mansfield, Akron or any other point where there is an elevator.

Q. So that there are no rates on grain from points of production west of the Missouri river to the Atlantic seaboard that are lower than the sums of the rates to those intermediate points and on?

A. No, sir. On traffic originating in Missouri they break at St. Louis. Traffic originating in northern Missouri and in Iowa where they are reached by Chicago lines they break at Chicago. From South Dakota they break at Chicago. From Minnesota they break at Chicago and at St. Paul and Duluth. And they break at Lake Michigan ports north of Chicago.

Q. Now this rate system that you have detailed, both on merchandise going west and grain going east, is a rate situation that in general has always obtained as a system of breaking rates?

A. Yes, sir, so long as I have been in this line of business.

Q. And these rates have been established and maintained as well where they obtained over a single line of railroads as where 1370 the traffic was transported over several lines of railroad?

A. Yes, sir, recognized basing points.

Q. The commercial effect as has been testified to of the breaking of rates is to enable the merchant at the point where the rates break to receive and handle and reship the commodity without added freight charge?

A. Yes, sir.

Q. Take the products of the west going east, is there any practice that has long obtained inhering in the rate system which allows that same commercial effect, and if so describe it?

A. Take live stock, wherever there are large centers, like Omaha, St. Joseph, Kansas City—I am sorry I cannot say Atchison—Fort Worth, Denver, where there are packing houses and markets for the manufacture of beef and so on, it is the custom and has been that shippers of live stock ship to those markets, avail themselves of the market privilege and dispose of the stock and the buyer may dispose of it to the local manufacturer or go on to some other market with it, or the original owner if not satisfied with the market price can go on to the next market in line of transit, at the Mississippi river or the Missouri river or Chicago, and have the privilege there of selling on the market or going on to the seaboard if he don't like it there.

1371 Q. The cattle shipper say from Texas can ship his cattle, stop them at Fort Worth, and if he does not like the market ship them on to Chicago?

A. Yes, sir.

Q. At the through rate?

A. Yes, sir.

Q. And that obtains at Omaha and Kansas City and St. Joe?

A. Yes, sir.

Q. So that he can stop and handle his cattle there and try the market and reship them to Chicago or St. Louis without any increase in freight charges?

A. Yes, sir.

Mr. WALTER:

Q. Do you mean if he shipped on from Omaha at the local rate from Omaha to Chicago?

A. I said he shipped on a through rate.

Mr. ATWOOD:

Q. At the remainder of the through rate?

A. He ships into Omaha and if the market doesn't suit him he goes on and the through rate is applied.

Mr. WALTER: It is not the local rate to Omaha plus the rate to Chicago?

A. Oh no.

Mr. McHUGH: You have spoken of cattle. With respect to what other commodity of the west does such privilege obtain?

A. It has been indulged in to a great extent in lumber, where they have milling in transit.

Q. Just what does that mean?

A. Logs may be shipped into a mill and sawed and go on, or lumber may be started in the rough and be planed in transit
1372 and go on to destination.

Mr. WEBSTER: This is not in rebuttal. It is absolutely new matter. You certainly do not expect us to concede the correctness of it.

Mr. McHUGH: I think this is rebuttal. You have gone into the whole commercial situation. This is clearly meeting that inquiry that you went into. If you want to call witnesses at any time I will not object.

Q. Then the lumber milling in transit you have testified to is simply a privilege accorded a man by which he can start logs and saw them into lumber or start lumber and stop it and plane it en route without any increase in the freight charge, but it goes through at the through rate?

A. Yes. There are others.

Q. With respect to what other commodity is such a privilege accorded?

A. Take the item of agricultural implements and vehicles, it is permissible and it is a practice indulged in extensively for these larger manufacturers of this kind of goods who have no warehouse

facilities at home, or for the purpose of getting the goods nearer the consumer when the season opens for their use, or for any other purpose that suits their convenience, to store at any point in the interior on the line towards one of the destinations and go forward when the shipments are finally made and the through rate from the initial point to the final destination protected without additional charge.

Q. So that in that way he has an opportunity to stop and handle his goods and reship them without increase of freight charges?

A. Yes, sir.

Q. With respect to what other commodity does that practice obtain?

A. Well, it has been practiced on what we call fabricating iron in transit. They will buy their iron in Pittsburg—structural steel—and carry it out to interior points where they have factories for shaping it for any particular building or structural operation.

Q. How about wheat?

A. Wheat comes in grain.

Q. But milling in transit of wheat?

A. All through the United States there are mills located which cannot possibly exist upon the wheat that is raised within wagon distance. When I speak of mills I do not mean little grist mills, I mean mills that do shipping business. They must get their raw material from points or sources further away. They are enabled to ship their wheat from points west of them, stop it at their mill, grind it into flour, or if it is corn into corn products, and forward it on to destination at the rate prevailing from the original point to that destination.

Q. In that way they have the privilege of stopping, handling and reshipping, without added freight charge?

1374 A. Yes, sir. They could not exist without it.

Q. Those practices obtain of course in the main where the through rate would be less than the sum of the locals?

A. Oh, yes. All the interior points. It is a general practice.

Q. The practice is general and has been of long continuance?

A. Yes, sir.

Q. And that practice likewise obtains not only where the haul is over one road but where it may be over several roads?

A. Yes.

Q. Mr. McVann raised the question as to the correctness of your map and your statement as to the rates into Iowa. I wish you would state whether you have gone into that matter thoroughly since that testimony?

A. I have.

Q. I wish you would explain in detail, giving the reference to the tariffs the rate system into Iowa from the points east of the river?

A. I want to go back for a moment to my original testimony. In that testimony I stated that rates in the state of Iowa were peculiarly constructed, owing to the Iowa distance tariff, that the through rates from the east to the Mississippi river over a single line added together established a basis of rates that all lines must meet; that it was by taking the rates from the east to the Missis-

1375 sippi river, applying locally to jobbers on that river, and the Iowa distance tariff from those points and adding them together, which made the through rate; and from that through rate they subtracted what is known as the proportional rate, otherwise known as the 116 per cent scale, now 117, and the remainder applied where the shipment was through; so that because the rate into the Mississippi river on through traffic was less than on local the rate out was higher than on local, the effect of which was to make in every case the same aggregate charge. A mere method of dividing, a matter altogether of the railroads. Now as illustrating the correctness of that statement I have taken the Chicago Burlington & Quincy, the Chicago Rock Island & Pacific, the Chicago Milwaukee & St. Paul, the Chicago & North-Western, the Chicago & Great Western, and the Illinois Central as the main traffic lines through the state of Iowa and I followed them through to the Missouri river, and I took twenty five mile jumps from the Mississippi river west on each one. Where I could strike a station exact I did it and if I could not I got as near to it as I could as illustrating, and I made some figures on the rates of the two locals and on the rates through, and I offer them here in evidence, and I give reference to each tariff from which I compiled, the I. C. number; and the Mississippi point on which they were based. Let

1376 me say here that I do not say nor I did not say that at each Mississippi river point the rates broke for every point west, because they are on different lines. Take each line by itself.

The minus signs represent the fact that the combination of locals is actually lower than the through rate until you come within what is known as the Missouri river zone. It is the extreme western portion of Iowa and north of the main line of the Rock Island, where the rates are a little in favor of the through line. That is because of Missouri river conditions. By way of explanation I want to say that that difference was not aimed at, it was not intended to correct that difference, but the intention was to make the rates, whether they were through or not, but for the sake of brevity we had to group the stations in Iowa, so that four or five or may be eight or ten stations on a line would be in one group, while the Iowa distance tariff would distinguish in each one, and that is the cause of these small discrepancies.

Q. The differences are very minor anyway?

A. Yes, sir.

Q. And due to the grouping?

A. Yes.

The tables presented by the witness were offered in evidence on behalf of the complainants and were marked "Exhibits H, I, J, K, L, M," and here follow:

Chicago, Burlington and Quincy Railroad Company.

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO. ET AL.

673

Through Rates on Class Traffic from New York to Points in Iowa Compared with Rates from New York to Fort Madison, Iowa, and Fort Madison to Iowa Points, Rehandled by Jobbers.

From N. Y. to—	On shipments—	Classes.	4.	5.
		3.		
Ottumwa (70).....	When made through.....	81.5	58	47
	" rehandled at Ft. Madison.....	80.4	57.8	47.6
	Difference.....	-1.1	-2	.6
Albia (94).....	When made through.....	83	59	47.5
	" rehandled at Ft. Madison.....	81.7	58.8	48.3
	Difference.....	-1.3	-2	.8
Chariton (124).....	When made through.....	85.5	61.5	49.5
	" rehandled at Ft. Madison.....	83.8	60.6	49.8
	Difference.....	1.7	-9	.3
Osceola (150).....	When made through.....	87	63	50.5
	" rehandled at Ft. Madison.....	85	62.3	51.3
	Difference.....	-2	-7	.8
Afton (174).....	When made through.....	89	64.5	52.5
	" rehandled at Ft. Madison.....	87.3	64	52.7
	Difference.....	-1.7	-5	.2
Prescott (197).....	When made through.....	93.5	67	56
	" rehandled at Ft. Madison.....	89	65.6	54.2
	Difference.....	4.5	1.4	1.8

From N. Y. to—	On shipments—	Classes.				
		1.	2.	3.	4.	5.
Villisca (218).....	When made through.....	146	120	93.5	67	56
	" rehanded at Ft. Madison.....	140.2	116.2	90.4	66.9	55.4
	Difference.....	5.8	3.8	3.1	.1	.6
Hastings (247).....	When made through.....	148	121	94	67	57
	" rehanded at Ft. Madison.....	145	119.1	92.5	68.8	57.1
	Difference.....	3	1.9	1.5	1.8	.1

Authority C., B. & Q. G. F. O. 12997 Oct. 15, 1903, I. C. C. No. 4512 and amendments and Iowa Railroad Commission State Tariff, No. 14, Lehigh Valley R. R. West-bound Through Freight Tariff No. 7, I. C. C. No. A-8590 issued Nov. 20th, 1905, effective December 1st, 1905.

Through Rates on Class Traffic from New York to Points in Iowa Compared with Rates from New York to Burlington, Iowa, and Burlington to Iowa Points, Rehandled by Jobbers.

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO. ET AL.

675

		Classes.				
		1.	2.	3.	4.	5.
From N. Y. to—		On shipments—				
Mt. Pleasant (27).....	When made through.....	115.5	100.0	78.5	56.0	45
	When rehandled at Burlington.....	114.6	99	77.7	55.8	46.2
	Difference.....	— .9	— .1	— .8	— .2	1.2
Fairfield (50).....	When made through.....	118.5	102.5	80.5	57	46
	“ rehandled at Burlington..	117	101	79.3	57	47
	Difference.....	— .5	— 1.5	— 1.2	0	01
Ottumwa (74).....	When made through.....	120	103.5	81.5	58	47
	“ rehandled at Burlington.....	119	102.7	80.7	58	47.7
	Difference.....	— 1	— .8	— .8	0	.7
Albia (98).....	When made through.....	122	105.5	83	59	47.5
	“ rehandled at Burlington.....	121	104.4	82	59	48.4
	Difference.....	— 1	— 1.1	— 1	0	.9
Chariton (128).....	When made through.....	128	109	85.5	61.5	49.5
	“ rehandled at Burlington.....	125.8	107.3	84.1	61	50.1
	Difference.....	— 2.2	1.7	— 1.4	— .5	.6
Osceola (154).....	When made through.....	131.5	111	87	63	50.5
	“ rehandled at Burlington.....	129.8	109.8	85.9	62.6	51.6
	Difference.....	— 1.7	— 1.2	— 1.1	— .4	1.1
Afton (178).....	When made through.....	135.5	113.5	89	64.5	52.5
	“ rehandled at Burlington.....	133.8	112.2	87.6	64.3	53
	Difference.....	— 1.7	— 1.3	— 1.4	— .2	.5

From N. Y. to—	On shipments—				
	1.	2.	Classes. 3.	4.	5.
Prescott (201).....	146	120	93.5	67	56
" rehandled at Burlington.....	138.6	115.2	89.7	66.2	54.8
Difference.....	-7.4	-4.8	-3.8	-8	-1.2
Villisca (222).....	146	120	93.5	67	56
" rehandled at Burlington.....	141.8	117.1	91.1	67.5	55.9
Difference.....	-4.2	-2.9	-2.4	.5	-.1
Hastings (251).....	148	121	94	67	57
" rehandled at Burlington.....	146.6	120.1	93.2	69.4	57.7
Difference.....	-1.4	-.9	-.8	2.4	.7

1379 Authority C. B. & Q. G. F. O. No. 12997 of 1903 I. C. C. No. 4512, and amendments, and Iowa Railroad Commission State tariff, Classification No. 14. Lehigh Valley R. R. Westbound Through Freight Tariff No. 7, I. C. C. No. A-8590 issued Nov. 20th, 1905, effective December 1st, 1905.

Through Rates on Class Traffic from New York to Points in Missouri Compared with the Rates from New York to Quincy, Ill., and Quincy to Missouri Points, Rehandled by Jobbers.

From N. Y. to—		Classes.				
		1.	2.	3.	4.	5.
On shipments—						
Monroe (30 miles).....	When made through.....	117	99	77	55	46
	When rehandled at Quincy.....	111	93	73	53	43
	Difference.....	-6	-6	-4	-2	-3
Lentner (53 miles).....	When made through.....	120	103.5	81.5	58	47
	When rehandled at Quincy.....	119	98	79	56	46.5
	Difference.....	-1	-5.5	-2.5	-2	-1.5
Bevier (75 miles).....	When made through.....	132	111	85	62	51
	When rehandled at Quincy.....	124	105.5	83	59	48
	Difference.....	-8	-5.5	-2	-3	-3
St. Catherine (100 miles).	When made through.....	132	111	86.5	62.5	51.5
	When rehandled at Quincy.....	128	109	85	61	50
	Difference.....	-4	-2	-1.5	-1.5	-1.5
Wheeling (121 miles).....	When made through.....	134	112.5	87.5	63.5	52.5
	When rehandled at Quincy.....	133	111	85	62	50
	Difference.....	-1	-1.5	-2.5	-1.5	-2.5
Nettleton (151 miles).....	When made through.....	148	121	94	68	57
	When rehandled at Quincy.....	139	115	89	65	55
	Difference.....	-9	-6	-5	-3	-2
Cameron (171 miles).....	When made through.....	148	121	94	68	57
	When rehandled at Quincy.....	142	116	89	66	55
	Difference.....	-6	-5	-5	-2	-2

From N. Y. to—	On shipments—	1.	2.	Classes. 3.	4.	5.
Kearney (200 miles).....	When made through.....	148	121	94	68	57
	When made through.....	148	121	94	68	57
	Difference	0	0	0	0	0
Harlan (225 miles).....	When made through.....	148	121	94	68	57
	When rehandled at Quincy.....	148.8	117.1	91.1	67.5	55.9
	Difference	-1.2	-3.9	-2.9	-5	-1.1

1380 Authority C. B. & Q. tariff G. F. O. No. 12997 of 1903, I. C. C., C. B. & Q. 4512, and amendments of 1903. Iowa Railroad Commission State tariff, Classification No. 14, July 1st, 1908. Various Eastern lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7 I. C. C., No. A-8590, issued Nov. 2nd, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of the figures shows the advantage combination of locals have over a through shipment.

The figures shown under each station indicate the distance from Mississippi River to point used.

Chicago, Rock Island and Pacific Railway Company.

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO. ET AL.

679

Through Rates on Class Traffic from New York to Points in Iowa Compared with the Rates from New York to Davenport, Iowa, and Davenport to Iowa Points, Rehandled by Jobbers.

From N. Y. to—	On shipments—				
Oasis (50 miles).....	1.	2.	Classes, 3.	4.	5.
When made through.....	117	101.5	79.5	56.5	45.5
When rehandled at Davenport.....	117	101	79.3	57	47
Difference	0	— .5	— .2	.5	1.5
Cedar Rapids (75 miles)....	119.5	103.5	81.5	58	46
When made through.....	119	102.5	80.7	58	47.7
When rehandled at Davenport	— .5	— 1	— .8	0	1.7
Difference					
Traer (122 miles).....	125	107.5	83.5	60.5	47.5
When made through.....	125	106.8	83.8	60.6	49.8
When rehandled at Davenport	0	— .7	— .3	.1	2.3
Difference					
Holland (146 miles)	127.5	109	85.5	61	49.5
When made through.....	129	109.3	85.5	62.3	51.3
When rehandled at Davenport	1.5	.3	0	1.3	1.8
Difference					
Iowa Falls (172 miles)	129	110	86	61	50
When made through.....	133	111.7	87.3	64	52.7
When rehandled at Davenport.....	4	1.7	1.3	3	2.7
Difference					
Galville (191 miles).....	137	114.5	89.5	65	53
When made through.....	137	114.2	89	65.6	54.2
When rehandled at Davenport.....	0	— .3	— .5	.6	1.2
Difference					

From N. Y. to—	On shipments—				
	1.	2.	3.	4.	5.
Livermore (228 miles)	137	114.5	89.5	65	53
When made through.....		117.1	91.1	67.5	55.9
When rehandled at Davenport	141.8	2.6	1.6	2.5	2.9
Difference	4.8				
Rodman (250 miles)		120	93.5	67	56
When made through.....	146	119.1	92.5	68.8	57.1
When rehandled at Davenport	145	— .9	— 1	1.8	1.1
Difference	— 1				
Wallingford (276 miles).....		120	93.5	67	56
When made through.....	146	123	95.3	71.4	59.4
When rehandled at Davenport.....	151.4	3	1.8	4.4	3.4
Difference	5.4				

Authority C. R. I. & P. G. F. D. No. 819-C, I. C. C. No. C-4140, of August 20th, 1903 and supplements. Iowa Railroad Commission State tariff, Classification No. 14 of July 1st, 1908. Various Eastern Lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7, I. C. C. No. A-8590, issued Nov. 2d, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of figures shows the advantage combination of locals have over a through shipment.

The figures shown under each station indicate the distance from Mississippi River to point used.

Chicago, Rock Island and Pacific Railway Company.

From N. Y. to—	On shipments—		Classes.		
	1.	2.	3.	4.	5.
Spirit Lake (299 Miles)	When made through	121	94	67	57
	When rehandled at Davenport	124	96	72	60
	Difference	5	2	5	3
Ocheyedan (321 Miles)	When made through	121	94	68	57
	When rehandled at Davenport	125.5	77.5	73.5	61.5
	Difference	6.5	3.5	5.5	4.5

Authority C. R. I. & P. G. F. D. No. 819—C, I. C. C. NC. C—4140, of August 20th, 1903, and supplements. Iowa Railroad Commission State tariff, Classification No. 14 of July 1st, 1908. Various Eastern lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7, I. C. C. No. A—8590, issued Nov. 2nd, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of figures shows the advantage combination of locals have over a through shipment. The figures shown under each station indicate the distance from Mississippi River to point used.

* Held down by Missouri River rate as maximum.

Chicago, Rock Island and Pacific Railway Company.

1383

Through Rates on Class Traffic from New York to Points in Iowa Compared with the Rates from New York to Davenport, Iowa, and Davenport to Iowa Points, Rehandled by Jobbers.

	From N. Y. to—	On shipments—	Classes.				
			1.	2.	3.	4.	5.
Wilton (25 Miles)		When made through.....	117	101.5	79.5	56.5	45.5
		“ rehandled at Davenport.....	114	98.5	77.3	55.5	45.9
		Difference.....	—3	—3	—2.2	—1	.4
Iowa City (53 Miles)		When made through.....	118.5	102.5	80.5	57	46
		“ rehandled at Davenport.....	117.4	101.3	79.6	57.2	47.1
		Difference.....	—1	—1.2	—9	.2	1.1
Homestead (74 Miles)		When made through.....	120	103.5	81.5	58	47
		“ rehandled at Davenport.....	119	102.7	80.7	58	47.7
		Difference.....	—1	—8	—8	0	.7
Victor (97 Miles)		When made through.....	122	105.5	83	59	47.5
		“ rehandled at Davenport.....	121	104.4	82	59	48.4
		Difference.....	—1	—01.1	—1	0	.9
Grinnell (120 Miles)		When made through.....	125	107.5	84.5	60.5	47.5
		“ rehandled at Davenport.....	124.2	106.4	83.4	60.3	49.6
		Difference.....	—8	—1.1	—1.1	—2	2.1
Colfax (152 Miles)		When made through.....	131.1	111	87	63	50.5
		“ rehandled at Davenport.....	129.8	109.8	85.9	62.6	51.6
		Difference.....	—1.7	—1.2	—1.1	—4	1.1

Through Rates on Class Traffic from New York to Points in Iowa Compared with the Rates from New York to Keokuk, Iowa, and Keokuk to Iowa Points, Rehandled by Jobbers.

From N. Y. to—	On shipments—	Classes.				
		1.	2.	3.	4.	5.
Croton (25 Miles)	When made through.....	115.5	100	78.5	56	45
	“ rehandled at Keokuk.....	114	98.5	77.3	55.5	45.9
	Difference.....	-1.5	-1.5	-1.2	-.5	.9
Kilbourne (48 Miles)	When made through.....	120	103.5	81.5	58	47
	When rehandled at Keokuk.....	117	101	79.3	57	47
	Difference.....	-3	-2.5	-2.2	-1	0
Ottumwa (76 Miles)	When made through.....	120	103.5	81.5	58	47
	“ rehandled at Keokuk.....	119.4	103.	80.9	58.2	47.8
	Difference.....	-.6	-.5	-.6	.2	.8
Beacon (100 Miles)	When made through.....	122	105.5	83	59	47.5
	“ rehandled at Keokuk.....	121	104.4	82	59	48.4
	Difference.....	-1	-1.1	-1	0	.9
Odey (127 Miles)	When made through.....	131.5	111	87	63	50.5
	“ rehandled at Keokuk.....	125.8	107.3	84.1	61	50.1
	Difference.....	-5.7	-3.7	-2.9	-2	-.4

Chicago, Rock Island and Pacific Railway Company.

1384

Through Rates on Class Traffic from New York to Points in Iowa Compared with the Rates from New York to Muscatine, Iowa, and Muscatine to Points in Iowa, Rehandled by Jobbers.

From N. Y. & to—	On shipments—	Classes.				
		1.	2.	3.	4.	5.
Washington (38 Miles)	When made through	118	102	80.5	57	46
	“ rehandled at Muscatine	115.8	100	78.5	56.4	46.6
	Difference	-2.2	-2	-2	-6	.6
Keota (53 Miles)	When made through	120	103.5	81.5	58	47
	“ rehandled at Muscatine	117.4	101.3	79.6	57.2	47.1
	Difference	-2.6	-2.2	-1.9	-8	.1
Atwood (78 Miles)	When made through	122	115.5	83	59	47.5
	“ rehandled at Muscatine	119.4	113	80.9	58.2	47.8
	Difference	-2.6	-2.5	-2.1	-8	.3
Leighton (100 Miles)	When made through	131.5	111	87	63	50.5
	“ rehandled at Muscatine	121	104.4	82	59	48.4
	Difference	-10.5	-6.6	-5	-4	-2.1
Fairmount (126 Miles)	When made through	131.5	111	87	63	50.5
	“ rehandled at Muscatine	125.8	107.3	84.1	61	50.1
	Difference	-5.7	-3.7	-2.9	-2	-.4

Through Rates on Class Traffic from New York to Points in Iowa Compared with the Combined Rates to Davenport, Keokuk, or Muscatine and the Rates Therefrom to Iowa Points when Rehandled by Jobbers.

From N. Y. to—		On shipments—				
		1.	2.	Classes.		5.
Des Moines (175 Miles) . . .	When made through	130	110	3.	4.	50.5
	" rehandled at Davenport	133	111.7	86	62.5	52.7
	Difference	3	1.7	87.3	64	2.2
(166 Miles)	When rehandled at Keokuk	132.2	111.3	1.3	1.5	52.5
	Difference	2.2	1.3	86.9	63.6	2
(155 Miles)	When rehandled at Muscatine	129.8	109	.9	1.1	51.6
1385	Difference	— .2	—1	85.9	62.6	1.1
De Soto (197 Miles)	When made through	137	114.5	89.5	64	53
	" rehandled at Davenport	137	114.2	89	65.6	54.2
	Difference	0	— .3	.5	1.6	1.2
(188 Miles)	When rehandled at Keokuk	135.4	113.2	88.3	64.9	53.6
	Difference	—1.6	—1.3	—1.2	.9	.6
(177 Miles)	When rehandled at Muscatine	138.8	112.2	87.6	64.3	53
	Difference	—3.2	—2.3	—1.9	.3	0
Chicago, Rock Island and Pacific Railway Company.						
Casey (227 Miles)	When made through	137	114.5	89.5	64	53
	" rehandled at Davenport	141.8	117.1	91.1	67.5	55.9
	Difference	4.8	2.6	1.6	3.5	2.9

On shipments—		Classes.				
From N. Y. to—		1.	2.	3.	4.	5.
(218 Miles).....	When rehandled at Keokuk.....	140.2	116.2	90.4	66.9	55.4
	Difference.....	3.2	1.7	.9	2.9	2.4
(207 Miles).....	When rehandled at Muscatine.....	138.6	115.2	89.7	66.2	54.8
	Difference.....	1.6	— .7	.2	2.2	1.8
Wiota (250 Miles).....	When made through.....	142	117.5	91.5	65.5	54.5
	“ rehandled at Davenport.....	145	119.1	92.5	68.8	57.1
	Difference.....	3	1.6	1	3.3	2.6
(241 Miles).....	When rehandled at Keokuk.....	145	119.1	92.5	68.8	57.1
	Difference.....	3	1.6	1	3.3	2.6
(230 Miles).....	When rehandled at Muscatine.....	141.8	117.1	91.1	67.5	55.9
	Difference.....	— .2	— .4	— .4	2	1.4
Avoca (276 Miles).....	When made through.....	*148	121	94	67	57
	When rehandled at Davenport.....	149.8	122.4	94.6	70.7	58.8
	Difference.....	1.8	1.4	.6	3.7	1.8
(267 Miles).....	When rehandled at Keokuk.....	148.2	121	93.9	70.1	58.3
	Difference.....	.2	0	— 1.1	3.1	1.3
(256 Miles).....	When rehandled at Muscatine.....	146.6	120.1	93.2	69.4	57.7
	Difference.....	— 1.4	— .9	— .8	2.4	.7

1386

Underwood (300 Miles)	When made through	*148	121	94	67	57
	" rehandled at Davenport	153	124	96	72	60
	Difference	5	3	2	5	3
(291 Miles)	When rehandled at Keokuk	153	124	96	72	60
	Difference	5	3	2	5	3
(280 Miles)	When rehandled at Muscatine	149.8	122.4	94.6	70.7	58.8
	Difference	1.8	1.4	.6	3.7	1.6

Authority C. R. I. & P. tariff 819—C, I. C. C. No. C.—414) and amendments of September 1st, 1903. Iowa Railroad Commission State tariff, Classification No. 14 July 1st, 1908. Various Eastern Lines tariffs for instance Lehigh Valley R. R. Westbound through freight tariff No. 7, I. C. C. No. A—8590, issued Nov. 20, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of figures shows the advantage combination of locals have over a through shipment.

* Held down by Missouri River rates as maximum.

The figures shown under each station indicate the distance from Mississippi River to point used.

1387

EXHIBIT "J."

Chicago, Milwaukee and Saint Paul Railway Company.

Through Rates on Class Traffic from New York to Points in Iowa Compared with the Rates from New York to Davenport, Iowa, and Davenport to Iowa Points, Rehandled by Jobbers.

From N. Y. to—	1.	2.	Classes. 3.	4.	5.
On shipments—					
Big Rock (26 Miles)	114.5	99	78	55	44.5
When made through.....					
When rehandled at Davenport.....	114.5	99	77.7	55.8	46.2
Difference.....	.1	0	— .3	.8	1.7
Hale (51 Miles)	117	101.5	79.5	56.5	45.5
When made through.....					
When rehandled at Davenport.....	117.4	101.3	79.6	57.2	47.1
Difference.....	.4	— .2	.1	.7	1.6
Paralta (73 Miles)	119	102.5	81	57.5	46
When made through.....					
When rehandled at Davenport.....	119	102.7	80.7	58	47.7
Difference.....	0	.2	— .3	.5	1.7
Newhall (101 Miles)	119.5	103.6	81.5	58	46
When made through.....					
When rehandled at Davenport.....	121.8	104.9	82.3	59.3	48.7
Difference.....	2.3	1.4	.8	1.3	2.7
Vining (123 Miles)	127.5	109	85.5	60	47.5
When made through.....					
When rehandled at Davenport.....	125	106.8	83.8	60.6	49.8
Difference.....	—2.5	—2.2	—1.7	.6	2.3
Ferguson (150 Miles)	127.5	109	85.5	61	47.5
When made through.....					

Collins (174 Miles)	When rehandled at Davenport.....	129	109	85.5	62.3	51.3
	Difference.....	2.5	.3	0	1.3	3.8
When made through.....	When rehandled at Davenport.....	131.5	111	87	62	50.5
	Difference.....	133	111.7	87.3	64	52.7
		1.5	.7	.3	2	2.2
*Madrid (201 Miles)	When made through.....	*131.5	111	87	63	50.5
	When rehandled at Davenport.....	138.6	115.2	89.7	66.2	54.8
	Difference.....	7.1	4.2	2.7	3.2	4.3
Dawson (224 Miles)	When made through.....	137	114.5	89.5	64	53
	When rehandled at Davenport.....	141.8	117.1	91.1	67.5	55.9
	Difference.....	4.8	2.6	1.6	3.5	2.9

Authority C. M. & St. P. G. F. D. No. 48454, I. C. C. A—8295, of May 3rd, 1905, and supplements. Iowa Railroad Commission State tariff, Classification No. 14 of July 1st, 1908. Various Eastern Lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7. I. C. C. No. A—8590, issued Nov. 2nd, 1905, effective December 1st, 1905, and amendments.

1388 The minus sign in front of figures shows the advantage combination of locals have over a through shipment.

The figures shown under each station indicate the distance from Mississippi River to point used.

* Held down by Missouri River rates as maximum.

* Through rates controlled by Des Moines mileage from the River of 165 Miles.

Chicago, Milwaukee and Saint Paul Railway Company.

From N. Y. to—	On shipments—				
	1.	2.	Classes. 3.	4.	5.
Coon Rapids (248 Miles) . . .	142	117	92	64	55
	145	119.1	92.5	68.8	57.1
	3	2.1	.5	4.8	2.1
Manning (270 Miles)	146	119	94	66	57
	148.2	121	93.9	70.1	58.3
	2.2	2	— .1	4.1	1.3
Panama (299 Miles)	146	119	94	66	57
	153	124	96	72	60
	7	5	2	6	3
Underwood (326 Miles)	*148	121	94	67	57
	154.5	125.5	97.5	73.5	61.5
	6.5	4.5	3.5	6.5	4.5

Authority C. M. & St. P. G. F. D. No. 48454, I. C. C. A.—8295, of May 3rd, 1905, and supplements. Iowa Railroad Commission State tariff, Classification No. 14 of July 1st, 1908. Various Eastern lines tariffs, for instance. Lehigh Valley R. R. Westbound through freight tariff No. 7, I. C. C. No. A—859, issued Nov. 2nd, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of figures shows the advantage combination of locals have over a through shipment.

1389 The figures shown under each station indicate the distance from Mississippi River to point used.

* Held down by Missouri River rates as maximum.

Chicago and Northwestern Railway Company.

Through Rates on Class Traffic from New York to Points in Iowa, Compared with the Rates from New York to Clinton, Iowa, and Clinton to Iowa Points, Rehandled by Jobbers.

From N. Y. to—	On shipments—				
	1.	2.	Classes. 3.	4.	5.
Grand Mound (25 Miles)	114.5	99	78	55	44.5
When made through	114	98.5	77.3	55.5	45.9
When rehandled at Clinton	— .5	— .5	— .7	.5	1.4
Difference					
Stanwood (52 Miles)	117	101.5	79.5	56.5	45.5
When made through	117.4	101.3	79.6	57.2	47.1
When rehandled at Clinton . . . . .	.4	—1.2	.1	.7	1.6
Difference					
Bertram (72 Miles)	119	102.3	81	57.5	46
When made through	119	102.7	80.7	58	47.7
When rehandled at Clinton	0	.2	— .3	.5	1.7
Difference					
Watkins (100 Miles)	122	105.5	83	59	47.5
When made through	121	104.4	82	59	48.4
When rehandled at Clinton	—1	—1.1	—1	0	.9
Difference					
Chelsea (122 Miles)	127.5	109	85.5	60	47.5
When made through	125	106.8	83.8	60.6	49.8
When rehandled at Clinton	—2.5	—2.2	—1.7	.6	2.3
Difference					
Quarry (145 Miles)	127.5	109	85.5	61	47.5
When made through					

From N. Y. to—	On shipments—				
	1.	2.	Classes. 3.	4.	5.
Colo (173 Miles)	When rehandled at Clinton.....	128.2	108.8	85.2	62
	Difference.....	7	—	3	1
	When made through.....	130	110	86	62.5
	When rehandled at Clinton.....	133	111.7	87.3	64
Jordan (197 Miles)	Difference.....	3	1.7	1.3	1.5
	When made through.....	135	113	88.5	64
	When rehandled at Clinton.....	137	114.2	89	65.6
	Difference.....	2	1.2	.5	1.6
Grand Junction (225 Miles)	When made through.....	137	114.5	89.5	64
	When rehandled at Clinton.....	141.8	117.1	91.1	67.5
	Difference.....	4.8	2.6	1.6	3.5

Authority C. & N. W. tariff, G. F. D. No. 11600, I. C. C. No. 6924 of October 6th, 1908, and amendments. Iowa Railroad Commission State tariff, Classification No. 14, of July 1st, 1908. Various Eastern Lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7 I. C. C. No. A—8590, issued Nov. 2nd, 1905, effective December 1st, 1905, and amendments.

1391 The minus sign in front of figures shows the advantage combination of locals over a through shipment.

The figures shown under each station indicate the distance from Mississippi River to point used.

1392

EXHIBIT "L."

Chicago Great Western Railway Company.

Through Rates on Class Traffic from New York to Points in Iowa, Compared with the Rates from New York to Dubuque, Iowa, and Dubuque to Points in Iowa, Rehandled by Jobbers.

From N. Y. to—	On shipments—				
	1.	2.	Classes. 3.	4.	5.
Farley (24 Miles)	115	99.5	78.5	55.5	45
When made through.....	114	98.5	77.3	55.5	45.9
When rehandled at Dubuque.....	—1	—1	—1.2	0	.9
Difference.....					
Thorpe (48 Miles)	117.5	101.5	80	56.5	46
When made through.....	117	101.	79.3	57	47
When rehandled at Dubuque.....	.5	.5	.7	— .5	1
Difference.....					
Oelwein (73 Miles)	119.5	103.5	81.5	58	46.5
When made through.....	119	102.7	80.7	58	47.7
When rehandled at Dubuque.....	— .5	— .8	— .8	0	1.2
Difference.....					
Waverly (102 Miles)	126	108	84.5	60	49
When made through.....	121.8	104.9	82.3	59.3	48.7
When rehandled at Dubuque.....	—4.2	—3.1	—2.2	— .7	— .3
Difference.....					
Bristow (128 Miles)	131	111	87	61	50.5
When made through.....	125.8	107.3	84.1	61	50.1
When rehandled at Dubuque.....	—5.2	—3.7	—2.9	0	— .4
Difference.....					

Coulter (152 Miles)	When made through.....	137	114.5	89.5	65	53
	When rehandled at Dubuque.....	129.8	109.8	85.9	62.6	51.6
	Difference.....	-7.2	-4.7	-3.6	-2.4	-1.4
Clarion (171 Miles)	When made through.....	137	114.5	89.5	65	53
	When rehandled at Dubuque.....	133	111.7	87.3	64	52.7
	Difference.....	-4	-2.8	-2.2	-1	-.3
Ft. Dodge (200 Miles)	When made through.....	137	114.5	89.5	65	53
	When rehandled at Dubuque.....	137	114.2	89	65.6	54.2
	Difference.....	0	-.3	-.5	.6	1.2

Authority C. G. W. G. F. D. No. 13157 I. C. C. No. 2002 of November 16th, 1906, and supplements. Iowa Railroad Commission State tariff, Classification No. 14 July 1st, 1908. Various Eastern Lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7 I. C. C. No. A-8590, issued Nov. 2, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of figures shows the advantage combination of locals have over a through shipment. The figures shown under each station indicate the distance from Mississippi River to point shown.

Chicago Great Western Railway Company.

1393

	From N. Y. to—	On shipments—	Classes.				
			1.	2.	3.	4.	5.
Somers (217 Miles)		When made through.....	139	116.5	91	64	54
		When rehandled at Dubuque.....	140.2	116.2	90.4	66.9	55.4
		Difference.....	1.2	— .3	— .6	2.9	1.4
Carroll (249 Miles)		When made through.....	142	117	92.	64	55.
		When rehandled at Dubuque.....	145	119.1	92.5	68.8	57.1
		Difference.....	3	2.1	.5	4.8	2.1
Botna (272 Miles)		When made through.....	*148	121	94	67	57
		When rehandled at Dubuque.....	149.8	122.4	94.6	70.7	58.8
		Difference.....	1.8	1.4	.6	3.7	1.8
Tenant (297 Miles)		When made through.....	*148	121	94	67	57
		When rehandled at Dubuque.....	153	124	96	72	60
		Difference.....	5	3	2	5	3
On Minnesota Line.							
Fredericksburg (99 Miles)		When made through.....	123.5	106.5	83.5	59.5	53
		When rehandled at Dubuque.....	121	104.4	82	59	48.4
		Difference.....	—2.5	—2.1	—1.5	— .5	—4.6
Elma (122 Miles)		When made through.....	123.5	106.5	83.5	59.5	53
		When rehandled at Dubuque.....	125	106.8	83.8	60.6	49.8
		Difference.....	2.5	.3	.3	1.1	—3.2

On Southwest Line.

Waterloo (99 Miles)	When made through.....	121.5	105	82.5	59	47
	When rehandled at Dubuque.....	121	104.4	82	59	48.4
	Difference.....	— .5	— .6	— .5	0	1.4
Berlin (125 Miles)	When made through.....	125	107.5	83.5	60.5	47.5
	When rehandled at Dubuque.....	125	106.8	83.8	60.6	49.8
	Difference.....	0	— .7	.3	.1	2.3
Marshalltown (147 Miles) ..	When made through.....	127.5	109	85.5	61	47.5
	When rehandled at Dubuque.....	129	109.3	85.5	62.3	51.3
	Difference.....	1.5	.3	0	1.3	3.8

Authority C. G. W. G. F. D. No. 13157, I. C. C. No. 4002 of November 16th, 1906, and supplements. Iowa Railroad Commission State tariff, Classification No. 14, of July 1st, 1908. Various Eastern Lines tariffs, for instance, Lehigh Valley Westbound through freight tariff No. 7, I. C. C. No. A—8590, issued Nov. 2, 1905, effective December 1st, 1906, and amendments.

1394 * Held down by Missouri River rates as maximum.

The minus sign in front of figures shows the advantage combination of locals have over a through shipment.

The figures shown under each station indicate the distance from Mississippi River to point mentioned.

EXHIBIT "M."

Illinois Central Railroad Company.

Through Rates on Class Traffic from New York to Points in Iowa Compared with Rates from New York to Dubuque, Iowa, and Dubuque to Iowa Points, Rehandled by Jobbers.

	From N. Y. to—	On shipments—	Classes.				
			1.	2.	3.	4.	5.
Farley (23 Miles)		When made through	115	99.5	78.5	55.5	45
		" rehandled at Dubuque	114	98.5	77.3	55.5	45.9
		Difference	—1	—1	—1.2	0	.9
Manchester (47 Miles)		When made through	117.5	101.5	80	56.5	46
		" rehandled at Dubuque	117	101	79.3	57	47
		Difference	—	.5	—	.7	1
Jessup (78 Miles)		When made through	121.5	105	82.5	59	47.5
		" rehandled at Dubuque	119.4	103	80.9	58.2	47.8
		Difference	—2.1	—2	—1.6	—	.3
Cedar Falls (100 Miles)		When made through	122	105.5	83	59	47.5
		" rehandled at Dubuque	121	104.4	82	59	48.4
		Difference	—1	—1.1	—1	0	.9
Aplington (124 Miles)		When made through	127.5	109	85.5	61	49.5
		" rehandled at Dubuque	125	106.8	83.8	60.6	49.8
		Difference	—2.5	—2.2	—1.7	—	.3

Williams (150 Miles)	When made through.....	134	112.5	88.5	64	51.5
	" rehandled at Dubuque.....	129	109.3	85.5	62.3	51.3
	Difference.....	-5	-3.2	-3	-1.7	-2
Webster City (172 Miles) ..	When made through.....	134	112.5	88.5	64	51.5
	" rehandled at Dubuque.....	133	111.7	87.3	64	52.7
	Difference.....	-1	-.8	-.2	0	1.2
Tara (198 Miles)	When made through.....	137	114.5	89.5	65	53
	" rehandled at Dubuque.....	137	112.2	89	65.6	54.2
	Difference.....	0	-.3	-.5	.6	1.2
Fonda (Sioux City Div.) (227 Miles)	When made through.....	143	118	92	67	55
	" rehandled at Dubuque.....	141.8	117.1	91.1	67.5	55.9
	Difference.....	-1.2	-.9	-.9	.5	.9
Sherwood (222 Miles)	When made through.....	143	118	92	67	55
	" rehandled at Dubuque.....	141.8	117.1	91.1	67.5	55.9
	Difference.....	-1.2	-.9	-.9	.5	.9
Wall Lake (243 Miles)	When made through.....	146	120	93.5	67	56
	" rehandled at Dubuque.....	145	119.1	92.5	68.8	57.1
	Difference.....	-1	-.9	-1	-1.8	1.1
1396						
Aurelia (259 Miles)	When made through.....	*148	121	94	67	57
	" rehandled at Dubuque.....	146.6	120.1	93.2	69.4	57.7
	Difference.....	-1.4	-.9	-.8	2.4	.7

From N. Y. to—	On shipments—	Classes.				
		1.	2.	3.	4.	5.
Cherokee (269 Miles) (Sioux City Div.)	When made through.....	*148	121	94	67	57
	When rehandled at Dubuque.....	148.2	121	93.9	70.1	58.3
	Difference.....	.2	0	— .1	3.1	1.3
Dow City (275 Miles)	When made through.....	*148	121	94	67	57
	When rehandled at Dubuque.....	149.8	122.4	94.6	70.7	58.8
	Difference.....	1.8	1.4	.6	3.7	1.8
Logan (301 Miles)	When made through.....	*148	121	94	67	57
	When rehandled at Dubuque.....	153.5	124.5	96.5	72.5	60.5
	Difference.....	5.5	3.5	2.5	5.5	3.5
Le Mars (302 Miles) (Sioux City Div.)	When made through.....	*148	121	94	67	57
	When rehandled at Dubuque.....	153.5	124.5	96.5	72.5	60.5
	Difference.....	5.5	3.5	2.5	5.5	3.5

Authority Ills. Central tariff B—4322, I. C. C. No. A—4330 of April 23rd, 1904, and amendments. Iowa Railroad Commission State tariff, Classification No. 14, July 1st, 1908. Various Eastern Lines tariffs, for instance, Lehigh Valley R. R. Westbound through freight tariff No. 7, I. C. C. No. A—8590, issued Nov. 2nd, 1905, effective December 1st, 1905, and amendments.

The minus sign in front of figures shows the advantage combination of locals over a through shipment. The figures shown under each station indicate the distance from Mississippi River to point used.

* Held down by Missouri River rates as maximum.



1397 Q. There was likewise a question raised by Mr. McVann as to the correctness of your map which was introduced in evidence, with respect to the rates into the state of Wisconsin. You have already covered that generally in your testimony but I wish you would be more specific and if you have a map illustrating that produce it?

A. The rates from the east into Wisconsin, which Mr. McVann testified was very largely covered by less than the through rates are notwithstanding that made on the combination of the locals through the various Lake Michigan ports, Chicago north, with the exception of Eau Claire, Chippewa Falls and La Crosse and points at the head of the lakes like Ashland and Duluth, which of course are reached by water, and the small territory known as the Milwaukee Chicago territory bordering Lake Michigan, covered by the map which I file here.

Q. We now produce a map which may be marked Exhibit N and ask you to state whether by a line the territory you last mentioned is indicated?

A. It is indicated by the red line in ink on the map:

Q. That red line in ink correctly represents it?

A. The red line indicates it, except where the red line meets the black line and crosses the line of the Chicago & North-Western at the north. It should go nearer straight east.

1398 Q. As I understand the rate through the lake port of Milwaukee to any point east of that red line is a through rate less than the sum of the locals?

A. Is the Chicago rate, yes, in that little zone there.

The said map here follows: It shows a red line from a point on the shore of Lake Michigan four or five miles south of Chicago running southwest through Willow Springs and then to the northwest west of the line of the Wisconsin Central Railroad as far north as Ackerville in Wisconsin and near Rugby Junction and then east to a point about ten miles from the lake and north including the city of Manitowoc.

(Here insert map marked page 1399.)

1400 Defendants' counsel moves to strike out all reference to what the rates are on the ground that the tariffs themselves are the best evidence.

Mr. McHUGH: We can produce those tariffs if you want them.

Mr. WALTER: I think the proper testimony as to what the rate is and the method of making rates are the tariffs.

Mr. McHUGH: The method of making rates is a different thing. If you want the rates in evidence we will have them.

Cross-examination.

By Mr. WALTER:

Q. The rate on grain from west to east as I understand you you state that that is handled on through rates which are made by adding two locals together?

A. I didn't say that.

Q. In no case is that true is it?

A. Yes, in some cases it is true.

Q. As a general rule isn't it the fact that grain from a point of production west of the Missouri river carried to points in C. F. A. territory or to eastern points takes a rate less than the sum of the locals?

A. Yes and no.

Q. What proportion is yes and what proportion no?

A. Theoretically yes, practically no.

1401 Q. What do you mean by theoretically?

A. You are distinguishing here between a so-called local rate and the practical rate. The rate from the Missouri river to Chicago and to the Mississippi river on traffic from points west thereof is what has been called a proportional rate. It is a rate that is applicable to all grain reforwarded from the Missouri river. There is a local rate from the Missouri river to Chicago that is higher, but it has never moved to my knowledge a car of grain. The rate applicable is the proportional and nobody could buy a car of grain and sell it and move it on the local and get out of it whole. He would lose, because the difference between the two is more than his profit. So that it all moves on a practical rate, what we call the proportional rate.

Q. What is that proportional rate from Kansas City to Chicago?

A. On wheat it is 12 and on corn and coarse grain it is 11.

Q. What is the local on wheat?

A. I think the local on wheat from Kansas City to Chicago is 15 cents.

Q. Wheat is shipped from Kansas City to Chicago?

A. Yes, sir.

Q. And is consumed right here?

A. Yes, sir.

Q. Do you mean to say that there is any of that wheat which is consumed locally that is carried on an 11 cent rate?

1402 A. No, 12 cent rate, every pound of it.

Q. Does not the tariff provide that in order for that 11 cent rate to apply the wheat must be carried beyond Chicago?

A. It does not.

Q. What does the tariff provide?

A. It provides that on wheat from the Missouri river coming from points beyond the rate to Chicago is 12 cents for Chicago locally or any other point east of here.

Q. Suppose it originates right at Kansas City what is the rate?

A. You cannot suppose it because it doesn't originate there.

Q. You have no rate which applies to wheat hauled in by wagon?

A. Yes there is a rate there but none is ever hauled.

Q. If you have a rate there it is meant to apply to the traffic is it not?

A. It is meant to apply but it never does.

Q. If it is applied as on traffic from west of Kansas City the law is violated isn't it?

A. No because it is well recognized by the Commission that grain loses its identity when it goes into an elevator. Wheat goes into the elevator according to grade and not according to origin. No market can store grain according to origin. They would have to have elevators all over the prairie. They store according to the quality of the grain irrespective of the source of origin. You cannot
1403 identify that grain as to whether it comes by wagon or not when it goes out on a bill.

Q. Does not the railroad itself have rules and an inspection force for the purpose of confining bills to wheat that actually comes in from points west?

A. They have an inspection department there that will not permit the grain to go forward on the proportional rate unless there is an expense bill or evidence produced that it came in there; but I tell you when the grain goes into the bin and is mixed with stuff that comes in by rail how is he going to pick out that grain that comes in by wagon and that which comes in by rail?

Q. Wheat does originate at Topeka does it not?

A. Yes.

Q. What is the rate from Topeka to Kansas City?

A. I think six cents.

Q. The rate from Kansas City to Chicago on that wheat originating at Topeka is how much?

A. Twelve cents.

Q. So that the through rate from Topeka to Chicago is how much?

A. Eighteen if that six cents is correct.

Q. What is the rate from Chicago to Cleveland on wheat?

A. It was seven and a half. I can't tell you the exact figure. I think it is seven and a half or eight cents.

Q. What is the rate from Kansas City to Cleveland?

A. Twelve plus whatever that is.

1404 Q. Plus seven and a half?

A. Whatever it is.

Q. In other words the rate from Kansas City to Cleveland is the sum of the locals based on Chicago?

A. Sometimes it is the sum of the local based on St. Louis for those short hauls.

Q. What would it be to Cleveland based on Chicago or St. Louis?

A. As I recollect it it would be based on both. Let me answer that in a way that perhaps will give you more information. With the exception of short points as we call them out here, like Indianapolis and that territory to the south and a few points on the Clover Leaf the method of rate making is St. Louis over Chicago an average of three cents because it takes from St. Louis in-bound three cents. That is true when you get to Buffalo and Pittsburg without exception and it is true of a great portion of the state of Ohio and in Michigan sometimes in Michigan it is on Chicago as against St. Louis.

Q. But there is a large class of territory to which the rate is not made by adding the rate to Chicago plus Chicago east?

A. There is some territory but it is made on combination to some other point like St. Louis. It breaks some place.

Q. Isn't it true that in every instance the carrier has a local rate applying between two given points which is substantially
1405 higher than the rate applicable between the two points when the grain originates west of the principal point?

A. No. There are cases, but not accurately speaking as you say.

Q. You take grain from Kansas City coming into St. Louis and going on to the east, that grain between Kansas City and the Mississippi river is carried at less than the local rate?

A. Less than the theoretical local rate.

Q. By theoretical you would want to be understood as saying that there is no such rate or tariff?

A. There is a tariff I tell you but it never is used, could not be used.

Q. The purpose of making tariffs is with a view to meeting the wants of traffic that moves?

A. That is supposed to be the purpose.

Q. As to grain milled in transit the rate which applies into the milling place and the rate out is less than the local rate to the mill and the local rate from the mill to destination?

A. Very frequently yes, not always. That depends on where the mill is.

Of course. All these rates depend on where the traffic is?

A. Yes.

Q. Live stock shipped from Texas points to Fort Worth, for example we will say El Paso to Fort Worth, do you know what the rate is?

A. No, I have forgotten.

Q. We will suppose it is 20 cents?

1406 A. It is more than that.

Q. Well, 40 cents. If live stock is shipped from El Paso to Fort Worth, butchered there and packed there it pays 40 cents. Now if live stock comes in from El Paso consigned to Chicago with the privilege of trying the market at Fort Worth and is shipped on,

the proportion of the rate applicable from El Paso to Fort Worth is less than the local rate isn't it?

A. They generally protect the division of the through rate which would be less.

Q. So that it is true generally that live stock which tries the market and then proceeds onward to another market is carried not at the local rate into that market plus the local rate out, but on the through rate?

A. That is what I said, on the through rate.

Q. Which is substantially less than the sum of the locals?

A. Yes, I think generally on live stock.

Q. Lumber which is in the shape of logs—

The WITNESS: All transit questions are handled on the through rate which is very often and generally for interior points, less than the sum of the locals because it is absolutely impossible to make a rate at every point. That does not obtain where there are terminal markets where the rates naturally break.

1407 Q. So that your testimony as to grain milled in transit, live stock trying a market, lumber milled in transit, changed from log to lumber, agricultural implements, fabric iron, none of that testimony was intended to state that the through rate was the sum of the locals?

A. Oh, no.

Q. Isn't it true that you have since this case was originated made rates from St. Louis for example to Omaha on commodities which had a different rate between the rivers depending upon the point of origin?

A. I don't know a case of it.

Q. What about coal?

A. I do not know of any case of that kind.

Q. Haven't you made a rate recently whereby the rate on coal between St. Louis and Omaha varies depending on the point of origin of that coal?

A. I do not know of any such rate.

Q. What is the rate on coal originating east of the Illinois and Indiana state line when carried from St. Louis to Omaha?

A. I could not tell you. I cannot remember all the rates.

Q. Do you want to state that it is the same without reference to the point of origin?

A. No, I do not. I would not state it because I say I do not keep in touch with all the rates on every commodity. It is absolutely impossible.

Q. You do not want to be understood as saying that the rate from the Mississippi river to Missouri river points never varies on account of the point of origin?

1408 A. With respect to Iowa, I have gone into that very fully and explained that, that it varies as a division of a rate but not as a basis of the rate.

Q. Isn't this true that when you published this 60 cent rate it was the same publication as though you had named all the first class articles?

A. Yes.

Q. Was made to apply on all traffic?

A. It was made to apply on all traffic except where there is a through traffic from the source of origin to destination, like trans-continental for instance.

Q. So that the Commission in making a different rate for example 51 cents on seaboard traffic, did not change the system of making rates at all did it?

A. You bet your life it did. It tore them all to pieces.

Q. A compliance with the order of the Commission would leave your 60 cent rate in effect on all first class traffic except that which you have excepted?

A. That destroys the rates.

Q. Isn't that true?

A. The Commission leaves in effect the conditions that it found except what it changes.

Q. It only changed the rate on seaboard traffic, isn't that true?

A. It changed the rate on all seaboard traffic, what we call seaboard territory.

1409 Q. That is all it did change isn't it?

A. That is enough.

Q. That is a matter for argument. All I want is an answer to the question as to what it did do?

A. Yes, sir. To what points please?

Q. I am speaking of the Commission's order?

A. It changes the rates on all seaboard traffic to where?

Q. You read the order. What does the order say?

A. I want to know, because once before when I was on the stand you made a very strong point on the fact that this is Missouri river.

Q. All that the Commission's order did was to reduce the rate on seaboard traffic from 60 cents to 51 cents when that traffic was going to Missouri river cities?

A. Yes, sir.

Q. It did not change the rate on first class traffic from any other point of origin to any other point of destination did it?

A. There is where I am a little afraid that it did most decidedly.

Q. Just name one point that it changed?

A. It changed the first class traffic from St. Louis to every point to and including Utah common points and points in Nevada west of there.

Q. Will you please show me in the tariff where it made
1410 that change?

A. I have explained that the rates break at the Missouri river and if one of two factors which added together make a whole is changed necessarily the whole must be changed.

Q. Without any exception?

A. How can you make it out?

Q. When the local rate from Chicago to St. Paul was 60 cents the roads put in a through rate of \$1.15, didn't they?

A. Yes.

Q. Don't you know as a matter of fact that the first class rate of 60 cents still stands locally Chicago to St. Paul?

A. I do.

Q. There was an exception in that case. It did not change the local rate from any other points to any other points?

A. Not the local rate no, sir. It changes the rate from the seaboard to all destinations west of the Missouri river and Utah, although the order stopped at the Missouri river.

Q. On seaboard traffic passing through Chicago for Fargo what is the rate?

A. I can't say.

Q. Can you name any point of destination that has the 40 cent rate applicable besides St. Paul and Minneapolis?

A. Yes.

Q. Name one.

A. Winona.

Q. That takes St. Paul rate doesn't it?

A. You asked me the question and I said yes.

1411 Q. Beyond that?

The WITNESS: West of St. Paul?

Mr. WALTER: Yes.

A. If the traffic is going beyond it takes 40 cent rate just the same as St. Paul proper would take it. It cannot help but take it.

Q. From Cleveland to St. Paul, what is the rate?

A. I cannot give you the figures.

Q. Isn't it the sum of the local first class rate into Chicago plus Chicago St. Paul?

A. No, sir, it is a through rate.

Q. It is a joint through rate?

A. Yes, sir.

Q. How long has it been?

A. Several years.

Q. What is the proportion applicable on the Cleveland business?

A. About 50 cents.

Q. It is higher than the New York proportion?

A. Yes.

Q. So that in that case the 40 cent proportion does not determine the charge by the carriers on through traffic?

A. Not from the east but it does from the west. I don't know that I made myself clear.

Q. I am frank to say it is not clear to me.

A. With respect to the origin of the traffic the order of the Commission is confined to the seaboard. It does not apply on
1412 a shipment from Cleveland 51 cent scale, but the Commission's order applies from St. Louis to Kansas City on its face when from the seaboard and it applies from St. Louis to every point in Kansas, Nebraska, Colorado, Wyoming, Utah, Nevada points and Idaho, on business from the seaboard.

Q. I would like to have you point out in that order where you get that?

A. If the rate today on a 60 cent scale to those points west of the Missouri river and local transfer makes a through rate from St. Louis on seaboard, and you cut that 60 to 51 on seaboard then a man shipping to a point west pays 51 up to the Missouri river and the same local that he paid before; therefore he gets the benefit of it on a

through shipment. He would not pay 60 cents on a shipment from New York to Grand Island Nebraska. He would pay the rate to St. Louis plus 51, plus his local. You cannot stop him.

Q. He would pay whatever the tariff provided for?

A. It is 51 cents.

Q. If you make a tariff which conforms with the Commission's order that tariff would simply provide 60 cents on all first class traffic, excepting on traffic originating at the seaboard and destined to the Missouri river cities 51 cents. Now would that exception apply to traffic destined to points beyond the Missouri river?

A. Most decidedly it would, because when the man gets to the Missouri river he has got the same factor to pay then as he
1413 has now. He will consign his freight to the Missouri river and become a local consignee there. He will reconsign it on to destination and he won't pay that 60 cents when he can get 51.

Q. But then the traffic would be Omaha to Grand Island wouldn't it?

A. Yes, sir, local traffic.

Q. Local traffic?

A. Yes, sir.

Q. Entirely?

A. Yes, sir, but he has only paid the 51 to get it there in the first place. He didn't pay 60.

Q. Do you want to be understood as saying that under the Commission's order any other traffic than that originating at seaboard points is affected by this order?

A. Not in source of origin I do not but I say as to destination yes.

Q. It is the same traffic. For example a car load of shoes from seaboard comes into Omaha, it pays 51 cents——

A. It will under the Commission's order.

Q. If he sold any of those shoes to points west he would pay the same rate west as if it originated locally at Omaha?

A. Yes, sir. I am not speaking about the Missouri river man at all. Here is a man in Grand Island or Denver or Salt Lake, a man in Colorado Springs or Pueblo or Idaho Falls or Pocatello, hundreds of these places, they are all buying shoes, when he goes to Boston and
1414 buys his shoes he pays the same rate to St. Louis as the man at Omaha or Kansas buying shoes, perhaps in the same train, then when he ships from St. Louis to the Missouri he pays the same rate, 51 cents, up to the Missouri river, on his shipments for the west, as the man at Omaha or Kansas City pays; then he reconsigns his shipment to his territory west, and he has got between the rivers the same rate as the man on the Missouri river.

Q. If the Denver man buys in New York City what rate will he pay?

The WITNESS: Under this new order?

Mr. WALTER: Yes.

A. 51 cents.

Q. When it is billed through to Denver?

A. He won't bill it through to Denver.

Q. I am asking you when it is billed through to Denver.

A. If it is billed through he will pay the prevailing rate from St. Louis.

Q. 60 cents?

A. Not necessarily, because the tariffs will have to change.

Q. If this order goes into effect will the Missouri Pacific change the first class rate on all traffic, without reference to point of origin, between the rivers, to 51 cents?

A. That is asking a question that I could not answer. I do not think that is a fair question. It is not what you are driving at. I

have said a dozen times that I do not question the application 1415 of the Commission's order as to origin. The Missouri Pacific will not go beyond the order of the Commission so far as I know at the present moment. What the policy will be will have to be dictated by others. If they put in a 51 cent rate from St. Louis to Kansas City on shipments from the seaboard they will make a through rate from St. Louis to Denver on local plus the 51 cents on a shipment from the seaboard.

Q. You are undertaking to make this order govern all first class traffic between the rivers?

A. No, I have tried to make that clear, because I have said all traffic would mean St. Louis local and would mean Cleveland and Indianapolis. I have said time after time that we won't go beyond, so far as I know, the seaboard, as a source of origin.

Q. Then this order if you understand it will apply only on seaboard origin?

A. So far as I know.

Q. And if the Denver man or Salt Lake man or Pocatello man or any other of the points beyond the Missouri river gets the advantage of that 51 cents as a proportional he will have to have his traffic rebilled at the Missouri river?

A. Not necessarily. I have said if the rates go in from St. Louis to Missouri river on seaboard that same factor will be available by other tariffs for points west of the Missouri river.

1416 Q. But it is not required by the Commission's order is it?

A. It is required by common sense.

Q. I am not asking that?

A. No. The Commission don't say it but it is there. Two and two make four.

Q. You admit in all fairness that the Commission's order applies only on through shipments from seaboard points to the Missouri river?

A. No, sir, I do not. By its terms, but by its application no.

Q. By its application you mean the action of the carrier in making a new tariff on traffic going beyond?

A. I mean by the application that the factor is there and that the shipper will use it. As a matter of convenience we naturally would publish a through tariff. It is going to be used if we take no action. Its application is as certain as the rising of the sun.

Q. Under the existing tariff if a man could take advantage of that 51 cent rate under the Commission's order he would have to bill his traffic only to the Missouri river?

A. Yes.

Q. And he would then have to have an agent at the Missouri river to accept the traffic and rebill it?

A. No, he would not anything of the kind.

Q. Somebody would have to do the rebilling?

A. All he would do would be simply to give an order to the railroad and they would rebill it.

1417 Q. Isn't it a rule on your line of road that where there is a through rate a man cannot bill his stuff locally and take advantage of less than the through rate?

A. There is no such rule that I know of. The United States Supreme Court knocked that theory into a cocked hat, and every railroad recognizes it. If a man wishes to ship from A to B and reconsign his freight from B to C we cannot stop him and do not attempt to.

Q. Suppose the through rate from A to C is 25 cents and the rate from A to B is 10 cents, and B to C ten cents will you allow a man to ship from A to B and reconsign from B to C at 20 cents?

A. If that is the tariff and he wishes to give an order we will do it.

Q. Will you reconsign it for him at B?

A. We do not reconsign. He reconsigns it himself.

Q. It is not true that the carrier will reconsign at any place when asked to do it?

A. It is. I have tried to make that plain: If the order is given to the carrier that carries it. We do not reconsign it on our own account.

Q. I want to ship a car load of wheat from A to C and I say to the agent at A you have got a ten cent local to B and a ten cent local from B to C and that makes 20 cents and the through rate is 25 cents and I request your agent at A to make out a bill of lading to B and I ask the agent at A to make out another bill of lading from B to C will he do it?

1418 A. No.

Q. Will your agent at B do it?

A. The agent at B will make out a bill of lading B to C if the man makes a new shipment of it and pays his charges in to B.

Q. Takes possession of it?

A. He don't take it out of the car.

Q. In other words for a man to avail himself of the sum of two rates less than a through rate he has got to have the agent at the intermediate point take care of the request for the new bill of lading and has got to pay the charges?

A. No, sir, he has not.

Q. I do not understand it.

Mr. Atwood: Supposing a man desires to make a shipment of goods from New York to Denver, the rate we will say to Denver is \$1.50, the combination of locals on the Missouri river would be \$1.25, and for convenience sake we will say it is a dollar to the Missouri river and 25 cents west, would your railroad or any other accept a shipment with this exceptional direction, ship these goods to the Missouri river and for that I will pay you a dollar, then I desire to reship them without further order from me to Denver, and

for that service I will pay you 25 cents, thus making the total expense to me \$1.25, would they do that?

1419 A. They would do that provided we took the property at the Missouri river and paid his charges, so that there is no advance billing, makes a new shipment and we give him a new bill of lading.

Q. I am saying without his doing anything more than just giving an order at the time he ships it in New York, would they do all the rest of it except his \$1.25 payment?

A. No, sir, we would not accept \$1.25. The only way we would do it, when the man takes out his bill of lading at New York, we are not down there, we do not run to New York, he will have to consign the car to the Missouri river and when it gets to the Missouri river and while it is in transit he would come to our road and say, I have got a car at the Missouri river and I want to reconsign this car from the Missouri river to Colorado, he will be told, I will not accept it unless the inbound charges are paid and you complete your transaction and then if you want to reconsign it it will go on and at the other end we will collect.

Q. Somebody would have to attend to the matter at the breaking point, the Missouri river?

A. Yes, he could prepay it. He wouldn't need to have an agent there.

Q. Suppose he said, Take these goods, at New York, mark them for the Missouri river, here is your dollar to pay for it, and when you get to the Missouri river I want you to reship them from the Missouri river to Denver at which point I will receive and pay
1420 the balance, will they do that?

A. Under a new bill of lading.

Q. Will they issue a new bill of lading upon that direction without anything being done by him or for him at the Missouri river?

A. I don't think they would require anything further than the fact that the man made a transaction to the Missouri River by changing his bill of lading in the first instance to the Missouri river and paying his rate and that they would accept an order from him to reconsign it after the freight got there or before. I don't think it would make any difference as long as he makes too transactions of it.

Mr. WALTER: I wish you would look for the tariffs and find any tariff that will authorize any such system as that?

A. We do not have to put it in the tariff. If a man wants to make a shipment to the Missouri river and a tariff is in effect to the Missouri river he avails himself of it. There is another tariff from the Missouri river to Denver. A man tenders us a car without any back charges or any source of origin except the Missouri river and we don't have to publish that tariff.

Q. Did you ever hear of any such transaction as that which Mr. Atwood has just asked you about?

A. Yes, lots of them.

Q. Just name one?

1421 A. I cannot give you the particular car.

Q. Give us the point?

A. I won't attempt to name the point.

Q. Give us the rate between any two points that will permit of such a system?

A. I do not know the tariff that says that. We don't say everything in a tariff. We have a specific tariff between two points and when we haul the freight that service ends. We have another tariff from that point and when a man asks for the rate the carriers must give it to him. We accept shipments from the Missouri river from a man whether he lives at the Missouri river or at New York. We do not have anything in our tariff to say where the man must live. It is a shipment from the Missouri river.

Q. I believe you testified before that the rate Omaha to Grand Island plus Grand Island to Cheyenne was greater than the through rate Omaha to Cheyenne?

A. I think I testified to that.

Q. And that is generally true of similar circumstances?

A. Over a single line of railroad.

Q. That is generally the custom through the country?

A. Over a single line of railroad. Not always true but generally.

Q. The exception you make is where there are two carriers performing the service?

1422 A. No, that is one exception.

Q. You want to be understood as stating that the custom of rate making west of the Mississippi river is that the through rate is the sum of the locals when two carriers are involved?

A. Generally speaking that is the system, with the few exceptions that I have given.

Q. But that is not true east of the Mississippi river north of the Ohio and Potomac?

A. On lines of the eastern railways I do not think it is true there.

Q. The through rate is less than the sum of the locals?

A. From New York to St. Louis and New York to Chicago, yes, all that intermediate territory.

Q. When two carriers can get the sum of the locals for a through haul they get the highest possible rate don't they under the tariffs existing?

A. Get the highest they can charge. I suppose they cannot charge higher than their locals when the rate breaks, but not necessarily always. Sometimes they get more than their locals.

Q. In your Iowa case on through business they get a higher rate than they do on local business?

A. Just in those few cases.

Q. The Iowa maximum tariff rate is fixed by law in the state of Iowa?

A. Yes.

1423 Q. When that law applies which is only on local traffic you would comply with it?

A. Yes, sir.

Q. Where the traffic is outside of the jurisdiction of the state authorities you apply the Iowa rate, is that true?

A. No that is not true. I am not going to read into my testimony a lot of sophistries that the public insist on applying which are not true. I have said to you that it is merely a method of dividing the rates between two carriers, in which the public have absolutely no interest. We charge the man who ships from the seaboard to Des Moines for instance a through rate in the aggregate, and the manner of dividing it between the line east of Chicago and the line west, or the line Chicago to Mississippi river and west has nothing to do with it.

Q. No matter what the theory may be or what the purpose or anything of that sort the fact is that for the carriers of through traffic between two given points in the state of Iowa the through rate is higher than the local rate?

A. I will not admit it. I say the through rate is a unit and I will not separate and pick out this factor for this thing and that factor for that thing. You may do it if you want to but this is my testimony. I say that we charge the shipper through an aggregate sum, and I do not admit that the division of the rate has anything to do with the total shipment.

Q. Then all that the man who ships seaboard traffic is
1424 interested in and all that the carrier is interested in is the through rate?

A. On that through shipment.

Q. 51 cents has nothing to do with through traffic?

A. The 51 cents as you have put it in is an open rate.

Q. Is not your rate published separately?

A. It is published separately in this way, they are subject to two different classifications. They are separate because of the fact that at the Mississippi river one classification ends and the other commences. They are there as two separate factors, in the first instance the local rate in to the Mississippi river and then the local rate out of the Mississippi river. Keep that in mind. Now when a man ships through instead of charging him the local rate in and the local rate out we add them together and charge him the sum. How we divide it is nothing to him. His aggregate sum is just the same as if he shipped-it locally.

Q. Isn't it true that you have in your tariffs for example to Des Moines—what is the rate locally from Davenport to Des Moines?

A. I don't know. I can figure it out if you give me the Rock Island figures there.

Q. Take the figures there and give it?

A. 36 cents.

Q. 36 cents is the local rate when traffic originates at Davenport and is carried to Des Moines?

A. Yes, sir.

Q. You have that in a separate tariff haven't you?

A. That is a distance tariff. The Commission publishes
1425 that.

Q. It is the tariff that you apply?

A. Yes.

Q. You have another tariff which provides that on traffic originat-

ing east of the Mississippi river and destined to Des Moines you will put in what rate?

A. As parts of a through rate from the seaboard divided between the lines east and west of the Mississippi river we have a rate of 42 cents.

Q. Now that 42 cents is published separately?

A. As a division.

Q. It is a separate tariff. A through rate of \$1.30.

A. No, sir, the tariff that bears out that 42 cents shows on its face that it is part of a through rate from the east and the eastern tariffs parts of through rates going west.

Q. What difference in principle and in application of tariffs would there be between that situation and a tariff which contained 51 cents applicable on traffic originating at seaboard points and destined to Kansas City and the local rate of 60 cents from St. Louis to Kansas City?

A. I will tell you. There is a vast difference.

Q. Point out one thing?

A. In the first place that 46 cent rate is only applicable on New York. New York is not seaboard territory. There is another applicable to Albany and there is another to Schenectady and another to Rochester and another on various points in the seaboard territory, and they are so made because of the local factors which affect their share. The local rate from the seaboard to Mississippi river and the 60 cent local rate out added together make a greater sum than your local rate to St. Louis and the Commission's orders, while these rates do not. There is the difference.

Q. Let me ask you this question: You have got a rate from Davenport to Des Moines that varies with the point of origin?

A. We have a division. I do not call it a rate.

Q. You have got a division of a rate separately published and established?

A. Yes.

Q. That is not stated on its face to be a division of a rate at all is it?

A. Parts of proportional rate. That is a divisional rate.

Q. You know better than that don't you?

A. A proportional rate is part of some total.

Q. But it is a separately established published portion?

A. You play on words.

Q. I want to ask you one more question: This 51 cent rate applies on for example Rochester traffic?

A. Yes, sir.

Q. When you publish this 51 cent rate applicable on Rochester business and publish 60 cent local St. Louis to Kansas City isn't that identically the same system that you publish from Davenport to Des Moines, 42 cents originating at New York and 36 cents originating at Davenport?

A. No, sir.

Mr. ATWOOD: Will you be good enough to turn to this schedule which you kindly furnished this morning. I think it is the first

page headed Chicago, Rock Island & Pacific. Have you got it before you?

A. Yes, sir.

Q. The word Wilton there, am I right in assuming that is the name of a town in Iowa?

A. Yes, sir.

Q. The Davenport is of course the Davenport that is in Iowa?

A. Yes, sir.

Q. That is right on the eastern boundary of Iowa or on the Mississippi river?

A. Yes, sir.

Q. The two rates from New York to Wilton in one instance through in the other instance rehandled at Davenport are \$1.17 and \$1.14 respectively?

A. Yes, sir.

At this point a recess was taken until two P. M.

The parties met at two o'clock, P. M. and the examination was continued by Mr. Atwood as follows:

Q. I was asking you about Wilton, using that as an illustrative point, and on that we had agreed that the \$1.17 appearing
1428 in the first column is indicative of the first class rate when goods are shipped from New York direct to Wilton, and that \$1.14 is the rate when they are rehandled at Davenport, making the in to Davenport and out from Davenport to Wilton, the aggregate of those two sums being \$1.14?

A. Yes, sir.

Q. Is 88 cents a constant factor in both those problems, the rate from New York, what I mean is, is the rate to the Mississippi river in both those rates 88 cents?

A. No.

Q. What is it in the 117 cent rate?

A. 88 cents.

Q. What is it in the 114 cent rate?

A. 97 cents.

Q. What name do you give to that part of the 117 rate that pays for the service from New York to the Mississippi river?

A. That is proportional.

Q. That proportional is 88 cents?

A. Yes, sir.

Q. What do you call the rate or portion of the rate that pays for the service from New York to the Mississippi river in the 114 cent rate?

A. That is the local rate.

Q. And the local rate is what?

A. 97 cents first class.

Q. What name do you give to the portion of the 114 cent rate that pays for the service from Davenport to Wilton?

A. Local rate.

1429 Q. That local rate if I have not made a mistake in my deduction is 17 cents.

A. It would be the difference between 114 and 97.

Q. What name do you give to that portion of the 117 cent rate that pays for the service between the Mississippi river at Davenport and Wilton?

A. We call it proportional rates.

Q. While the local rate on the 117 cent rate from Davenport to Wilton is 17 cents the proportional on the through rate from New York to Wilton that pays for the service between the river and Wilton is 29 cents?

A. Yes, sir.

Q. It is a fact is it not that the New York Wilton rate through is an Interstate Commerce rate?

A. Yes, sir.

Q. And it is equally true that the local from Davenport to Wilton is not an Interstate rate?

A. No, sir.

Q. The result is in this particular instance then that the proportion of the through or Interstate Commerce rate over which the state of Iowa has no dominion is 12 cents higher than the local rate for the service between Davenport and Wilton?

A. That is the difference between the two. Let me explain.

Q. You have answered my question.

A. I think my answer should be clear.

1430 Q. You have answered my question just as straight as a die.

A. I want to put in this reservation.

Q. I am not going to be so rude as to attempt to interrupt you if you want to say anything more.

A. This proportional rate so-called from Davenport to Wilton is dictated simply by the difference between the sum of the locals and the amount that is applied up to the Mississippi river. There was no intent of course to make it 12 or 7 or anything else, the idea prevailing that the through rate and the local rate should be the same. As to why that little difference at that one point of 6 cents which is greater than at the other points west I will say that on the interstate shipments there we group the state of Iowa for the sake of brevity or we would have a tariff so large that few people could understand it. We have made so-called groups or small zones and naturally wherever there is a zone the point farthest away in the zone is a little different as compared with the nearby points. That apparent discrepancy is caused by the fact that on through traffic we group while on local traffic the state of Iowa makes a separate rate for each one.

Q. But the fact still remains that whatever the purpose of anybody who had to do with the making of these rates might have been, on the Interstate shipments from New York to Wilton through the Davenport Wilton proportional is 12 cents more than the

1431 local from Davenport to Wilton?

A. Against a 9 cent advantage which it has on the other side of the river.

Q. Take the next place, Iowa City, the through rate is \$1.18 5/10 from New York direct to Iowa City?

A. Yes, sir.

Q. And 117.4 is the combination of locals on Davenport when rehandled at the last named place?

A. Yes, sir.

Q. What is the rate from New York to Davenport?

A. Just the same.

Q. 97 cents, and the other is 88?

A. Yes.

Q. The result is that the proportional on the through rate for the service from Davenport to Iowa City is 30.5 cents. Am I right in my computation?

A. Yes.

Q. I presume I am right in calling the rate to Iowa City from Davenport where the rehandling transpires at Davenport as a local?

A. Yes, sir.

Q. So this proportional of 30.5 cents is contrasted with 20.4 cents locally?

A. Yes, sir.

Q. Again the Interstate proportional between Davenport and Iowa City is ten cents more than the local from Davenport to Iowa City?

A. As against the advantage of 9 cents on the east.

1432 Q. I recognize the fact that you cannot carry all these rates in your mind but do you recall at this minute any place outside of Iowa where a similar result is wrought out?

A. No, sir, I cannot.

Q. You spoke this morning about the rates for Nebraska, Kansas, Wyoming, Colorado, Idaho and Nevada with certain exceptions of course—

A. Yes.

Q. —breaking on Missouri river. Is that because the Missouri river is a basing point?

A. It always have been so considered.

Q. Being such it is a proper place on which to make calculations for a combination of rates, in the eyes at least of the freight making men? Am I right about that?

A. If it is a basing point the rates will naturally break at that point, but now if I understand your question correctly as to the cause of its being a basing point—

Q. No, I have not asked for that, because there is an infinite amount of argument to be had on both sides of that. I simply want to know whether or not it was a basing point properly so described. This is a mere passing question for my own curiosity. Can you recall the names of the places that are included in Colorado common points?

A. I will give you the principal points. There is a lot of little stations but the real points are Denver, Pueblo, Colorado Springs and Trinidad. There is a lot of little coal stations and side stations.

1433 It is understood that the witness will hand to the Special Examiner the tariffs heretofore referred to as those to be produced by him.

Mr. WALTER:

Q. Now the local rate to Davenport is 124 per cent of Chicago rate?

A. 122 plus.

Q. Plus two cents?

A. No it is plus 5 on first class.

Q. Then the local rate in to Davenport would be 96½?

A. The rule of fractions in making a percentage is where it is over 5 cents it is counted as a whole and where it is under it is counted as one, so your 122 per cent of 75 plus 5 cents leaves 97 cents.

Q. It would be 96.5 but you call that 97?

A. 97 is the way the tariff is published. That is the rule as to fractions. If it is under 5 they drop it.

Q. What is the local rate from Davenport to Des Moines?

A. I think it figures out 36 cents here. 36, yes.

Q. So that when rehandled it is \$1.33, at Des Moines?

A. Yes, so far as Davenport is concerned. Keokuk it is \$1.32 2/10. Muskatine it is \$1.29 8/10. They are all Mississippi River points.

Q. On page 2 you have it when rehandled at Davenport \$1.33?

A. Yes, right under there I combine three points together.

Q. Don't you have to protect the lowest rate?

1434 The WITNESS: On locals in and locals out?

Mr. WALTER: Yes?

A. No.

Q. Each carrier charges its own?

A. According to the river points it passes through.

Mr. WEBSTER: I want to ask you just a few questions. They are matters on which we all have general knowledge but I have no recollection that certain facts appear in this record so far although some of them may that I am going to ask you. What is the local rate from New York to Chicago first class?

A. 75 cents. That is standard rail.

Q. New York to St. Louis first class?

A. 88 cents.

Q. St. Louis to the Missouri river first class?

A. 60 cents.

Q. Chicago to Missouri river first class?

A. 80 cents.

Q. Chicago to St. Paul and Minneapolis local rate?

A. 60 cents.

Q. The through rate from New York to Missouri river by way of St. Louis.

A. \$1.48.

Q. And by way of Chicago?

A. \$1.55.

Q. And the through rate to St. Paul and Minneapolis from New York?

A. \$1.15.

Q. Calling your attention to the specific illustrations given 1435 by you this forenoon wherein shippers of certain articles or commodities such as cattle, grain, lumber, and so forth, the instances wherein you stated that the shipper might take advantage of an intermediate market and sell if he so elected, or if not to continue his shipment to the point of destination, you meant by that I assume that if he elected to continue the shipment he had the advantage of the through rate from the original point of shipment to the ultimate point of destination?

A. If he went on through.

Q. The only advantage of the shipper in electing to continue that shipment that he had the advantage of a through rate from the original point of shipment to the ultimate point of destination?

A. If he went on through.

Q. And the only advantage of the shipper in electing to continue that shipment was the advantage of the through rate in which those instances you stated would be less than the sums of the locals if he had taken his goods off at one of the intermediate points?

A. I do not know as I get that clear.

Q. I will make it specific. Take a shipment of cattle by way of illustration, if he elected he might stop off his shipment at the stock yards at South Omaha?

A. Yes, sir.

Q. Or he might continue that shipment on to Chicago if he 1436 so elected, not finding a market in South Omaha?

A. Yes, sir.

Q. The rate from Cheyenne if you please to South Omaha, the local rate would be how much?

A. I cannot remember all those figures.

Q. Can you remember what the local rate would be from South Omaha to Chicago on cattle?

A. I think it is twenty three and a half cents.

Q. The sum of the locals from Cheyenne to South Omaha plus the local from South Omaha to Chicago would be more than it would be on that shipment of cattle from Cheyenne to Chicago?

A. It might be. I could not answer. Some of those are and some are not. I cannot tell which is which.

Q. What do you mean by that?

A. I cannot tell you just which points are on the sum of the locals and which not.

Q. If the through rate was not less than the sum of the locals a shipper would gain nothing by electing to continue the shipment under the same bill of lading?

A. Nothing so far as transportation is concerned. He would gain the benefit of the market.

Q. He would have the same advantage of benefit of market independent of the question of making it a through shipment?

A. If the rates were on the two locals, yes.

Q. So that whether it is an advantage to the shipper depends upon the fact that the through rates in these respective instances would be less than the sums of the locals?

A. No. Let me explain.

Q. I just want an answer to the question, whether that is true or not?

A. No. It depends on the privilege given to him. If the rate is less than the sums of the locals and he attempted to stop his business at Omaha and take advantage of the market there if it was not satisfactory and he went on to Chicago he would have to pay the two locals unless he had a privilege which would enable him to go on at the through rate.

Q. So that the advantage to him would be that the through rate would be less than the sum of the two locals?

A. The privilege.

Q. The privilege you grant him is an advantage because the through rate would be less than the sum of the two locals?

A. Yes, and he could not use it unless you gave him the privilege.

Q. But the privilege to be an advantage to him depends on the fact that the through rate would be less than the sum of the two locals?

A. Yes, sir.

Q. That same principle applies to all the illustrations that you gave where the privilege would be an advantage?

A. Yes.

Mr. WALTER: 80 cents is the local rate from Chicago to Kansas City.

1438 A. Yes, sir.

Q. What is the division east and west of the Mississippi River?

A. There are no divisions east and west of the Mississippi river on roads that run through that I know of.

Q. Those that do not run through, what is the division?

A. There is one line that has a joint rate between the Chicago and Missouri river. That is the Illinois Central with the Missouri Pacific. Those divisions I think are 45 and 55, but I am not sure.

Q. That 55 per cent is the part between the rivers?

A. I think it is.

Q. Which would make 44 cents to balance?

A. Whatever it is.

Q. You have no reason in the world to doubt the accuracy of those figures?

A. I think they are about right.

At this point an adjournment was taken until Saturday, May 22, 1909 at ten o'clock A. M., at which time the parties met pursuant to adjournment.

Mr. Webster made the following statement: The intervening defendant, the Burnham, Hanna, Munger Dry Goods Company and others offer in evidence a bound volume containing a copy of the evidence taken before the Interstate Commerce Commission in the

proceeding wherein Burnham, Hanna, Munger Dry Goods Company, et al., were complainants and the Chicago, Rock Island & Pacific Railway Company, et al., were defendants, being Number 983 on the docket of said Commission; and in addition thereto offer the exhibits referred to in the said volume of evidence, also copies of the answers filed by the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, the Chicago & North-Western Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago Great Western Railway Company and the New York Central and Hudson River Railroad Company.

It was agreed that said documents should be produced upon the trial.

1440 Before the Interstate Commerce Commission.

No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Complainants,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al., Defendants.

Before Commissioners Clark and Harlan.

KANSAS CITY, MISSOURI, November 21, 1907.

* * * * *

1441 *Appearances.*

For the Complainants, John L. Webster, of Omaha, and Atwood, Littlefield & Hooper, of Kansas City.

For the Chicago, Rock Island & Pacific Ry. Co., E. B. Price, of Chicago, Illinois.

For The Chicago, Burlington & Quincy Ry. Co., Mr. O. M. Spencer and Mr. Hale Holden.

For The Chicago Northwestern, Mr. S. A. Lynde, of Chicago.

For Chicago, Milwaukee & St. Paul Ry. Co., Mr. William Ellis, of Chicago.

For The Chicago & Great Western Ry. Co., Mr. Frank Hagerman and Mr. Kimbrough Stone.

For the Intervenor, St. Paul Jobbers & Manufacturers Association, Mr. J. H. Beck, of St. Paul.

For the Intervenor, Chicago Association of Commerce, Mr. M. C. Barlow.

For The Merchants Exchange Traffic Bureau, of St. Louis, Mr. James C. Lincoln of St. Louis.

For the Business Men's League of St. Louis, Mr. P. W. Coyle.

For the Sioux City Commercial Club, Mr. George C. Scott, of Sioux City, Iowa.

1442 Commissioner CLARK: Gentlemen, we have set for hearing this morning case No. 983, Burnham, Hanna, Munger Dry Goods Company and others, against the Chicago, Rock Island & Pacific Railway Company, and others. Will you please give us the appearances.

Mr. PEIRCE: E. B. Peirce, for the Chicago, Rock Island & Pacific Railway.

Mr. ATWOOD: The complainants are represented by John L. Webster, of Omaha, and Atwood, Littlefield & Hooper, of Kansas City.

Mr. HOLDEN: The Chicago, Burlington & Quincy Railroad Company is represented by O. M. Spencer and Hale Holden.

Mr. LYNDE: S. A. Lynde appears for the Chicago Northwestern.

Mr. ELLIS: William Ellis for the Chicago, Milwaukee & St. Paul.

Commissioner CLARK: Are there any other appearances for the defendants?

Mr. STONE: Frank Hagerman and Kimbrough Stone for the Chicago & Great Western Railway Company.

Mr. SEYMOUR: E. J. Seymour, Assistant General Freight Agent, appears also for the Chicago & Northwestern Railway Company.

1443 Mr. BEEK: My name is J. H. Beek, and if the Commission please, I represent the St. Paul Jobbers & Manufacturers Association of St. Paul, and the Commercial Club of Minneapolis. We are not parties defendant in this case, and singular as it may seem, have had no notice of it and our attention was not called to it until day before yesterday, and we would like to have leave now to intervene. I have prepared a petition to that effect, which I would like permission to file. We feel the Cities of St. Paul and Minneapolis and the commercial interests of those cities are interested in the determination of this question. The testimony that they would properly offer would be vital to a determination of this question. We would like leave to file a petition of intervention at this time.

Commissioner CLARK: Is it your desire to produce witnesses also?

Mr. BEEK: We will be unable to do so at the hearing to-day, but as I understand it, there will probably be subsequent hearings, and at that time we will be prepared to offer witnesses if it should seem desirable. It is quite possible that in the development of the case we will not feel we can offer any additional testimony.

Commissioner HARLAN: You wish to become a party defendant?

Mr. BEEK: Yes, sir.

Commissioner CLARK: The Commission of course desires any competent and relevant testimony or information that will assist it in determining the merits involved in this case. The case has been on the docket for a long time and would have been heard early last summer but for a desire to make additional parties defendants, to which request the Commission acceded. While we are disposed to permit you to intervene and make such showing as you can or desire pertinent to the case, we do not think that the case should be further delayed for that purpose. The plans have been laid to take testimony here today and tomorrow, and on Saturday if necessary,

and to continue the taking of testimony in Chicago on Monday next, if there is additional testimony that the parties desire to produce at that time and place. We are not prepared to promise you any subsequent opportunities to submit testimony, but we will hear such testimony as you desire to submit here at this time, 1445 or in Chicago on Monday next. You may file your petition as Intervenor.

Said petition was filed at this time, and is transmitted herewith.

Mr. BARLOW: My name is H. C. Barlow, and I appear for the Chicago Association of Commerce. We desire to intervene in this case and so notified the Commission. Our object and purpose of intervention is, we believe that the decision of this case may modify and change, radically, if you please, the present basis of rates throughout the western country, and perhaps throughout the entire United States, and that we have a very vital interest. If we are to face a period which shall be satisfactory rather than a continuation of the old idea of certain basing points and rates made up on combinations of locals, then we feel that that theory will be extended and not confined to points directly in interest in this case. Therefore we have a vital interest in the matter, and we desire to be heard, and we may desire to produce witnesses. In any event, however, we will not delay the case.

Commissioner CLARK: Under what name, Mr. Barlow, or just what interest do you desire to appear for?

1446 Mr. BARLOW: The Chicago Association of Commerce, an organization under the laws of the State of Illinois.

Mr. LINCOLN: I appear for the Merchants Exchange Traffic Bureau of St. Louis. James C. Lincoln, Commissioner, representing the Merchants Exchange Traffic Bureau of St. Louis, Missouri. We desire to appear as parties interested in the outcome of this case. We do not wish to introduce any testimony, but wish to be heard upon briefs based upon the testimony presented by the other parties in the case.

Mr. COYLE: P. W. Coyle, representing the Business Men's League of St. Louis, and for substantially the same reasons stated by Mr. Barlow and Mr. Lincoln, we beg the privilege of intervening, with assurances we will not delay the case.

Commissioner CLARK: Are there any others?

Mr. SCOTT: My name is George C. Scott, representing the Sioux City Commercial Club. We feel that we are interested in this case in common with the cities of Kansas City, St. Joseph, and Omaha, and would like the privilege of intervening, not for the purpose, as we believe now, of offering testimony, but if desirable to file a brief.

1447 Commissioner CLARK: If there are no other appearances, Mr. Webster, you may make an opening statement, if you desire, and we will hear you.

Mr. WEBSTER: If the Commissioners please, I wish to remark at the outset that the complaints in this case are made by the parties named in the petition, representing the jobbers of Omaha, St. Joseph and Kansas City, and we have no desire to seek any advantage what-

ever over the cities that have sought to intervene, to wit, Chicago, St. Louis, Minneapolis and St. Paul. What we do desire is nothing more than that these three cities named shall be put on an equality with St. Paul and Minneapolis in the north, St. Louis in the south, and Chicago in the east. We expect to introduce testimony to show, and we believe it to be true, that the three cities whose interests we represent, for a long period of years have been discriminated against by the railway companies in favor of the other cities that I have mentioned, and whose interests are now sought to be injected into this controversy. Those three cities are Omaha, St. Joseph and

Kansas City, situated upon the Missouri River, and are surrounded by a territory into which the other cities as competitors or jobbers can ship goods to the advantage of themselves, and to a disadvantage to jobbers of Omaha, St. Joseph and Kansas City. I will state that in a little more concrete form. From the Atlantic seaboard to the three Missouri River cities named there is a rate upon first class of \$1.47 per hundred. That same merchandise can be shipped from the Atlantic seaboard to St. Paul and Minneapolis, first class, at a rate of \$1.15, and to St. Louis at a rate of about \$1.10. As between St. Paul, Minneapolis and Omaha, St. Joseph and Kansas City, there is this point, that the through rate discriminates in favor of St. Paul and Minneapolis, and as against Omaha, St. Joseph and Kansas City to the extent of about 32 cents per 100 pounds. The result is that the three cities named, Omaha, St. Joseph and Kansas City, might, to use an expression which may be used perhaps during the offering of testimony, be termed to be placed in a pocket. It costs the jobbers in those three cities, and perhaps the jobbers of other cities, about a sum of money equal to three per cent of the gross cost of their merchandise, to transport

the same to the points where they may be situated in this Missouri River pocket from the point of purchase. Twenty per cent of the entire cost of doing business is absorbed in freight rates. Let me put that in another form. A house in the City of St. Paul or Minneapolis doing a business of five million dollars per year, which is not unusual for a wholesale house, has an advantage in sales of account of freight rates of about \$40,000 per year over like houses situated in Omaha, St. Joseph or Kansas City, doing the same amount of business. The result is in all the territory to the northwest, including the States of Montana and Washington, and I might say westward to the Pacific Coast and territory which is traversed by railways westward of St. Paul and Minneapolis are likewise traversed by lines of railway from Omaha into the same territory, and which are included likewise to the jobbers of Kansas City and St. Joseph, and in all that territory the shipper from St. Paul and Minneapolis can deliver his goods at the point of destination, a point equally distant from the Atlantic seaboard, or about equally distant, from St. Paul or Minneapolis, or Omaha,

St. Joseph or Kansas City, at a rate of about 30 to 35 cents per hundred pounds on first class, less than the same goods can be delivered at the same point of destination by Omaha, St.

Joseph or Kansas City. As remarked a moment ago, that discrimination in rates would give the jobber of the northern cities an advantage or saving of something like \$40,000 a year, which ordinarily would be considered quite a profit on the business, or quite a disadvantage to the man who suffers the burden. From a legal standpoint, to use an expression more familiar, it is quite a discrimination against the jobbers of Omaha, Kansas City and St. Joseph, I understand it is sometimes stated as a justification for giving the lower rates to St. Paul and Minneapolis, to wit, \$1.15, that it is claimed the rate has been established on account of water competition. We do not believe there is anything in that theory. We think it is a suggestion without any foundation to support it. As a matter of fact we believe it to be true, and expect to introduce testimony to the point that there never was a period of time when there was any such thing known as actual water competition between the Atlantic

seaboard, and St. Paul and Minneapolis, for the classes or
1451 kinds of goods which these complainants represent and transport. Particularly is that true of dry goods. There never was a shipment of that kind of merchandise by water between these points. It is likewise true that the nearest point by water competition, giving it the most favorable construction, would be Duluth, quite a long distance from St. Paul and Minneapolis. But the other fact remains, and we expect to establish by the evidence, that the rates of transportation from the Atlantic seaboard to St. Paul and Minneapolis, are rates which have been fixed by Canadian lines or by the owners of the water transportation, but to the contrary, that the Canadian Railroad Lines, in fixing their tariffs, have taken the tariffs as established by the American railroads as their basis, and have made the declaration that their tariffs should be the same as the tariffs fixed by the American railroads, and that whenever there should be a change in the tariffs fixed by the American railroads, that the Canadian Railroad Lines would conform their rates thereto.

If we are right in our view of that point, the result follows
1452 that the American railroads at all times have fixed the rates from the Atlantic seaboard to St. Paul and Minneapolis, and the supposed water competition never had anything to do with it, and neither had the railroad transportation over the Canadian Lines anything whatsoever to do with it.

It would further appear in the introduction of testimony that notwithstanding these lower rates, which we think are something of a favoritism to St. Paul and Minneapolis, that they result entirely from a reduced rate from Chicago to St. Paul and Minneapolis; that is to say, in the through rate from the Atlantic seaboard to St. Paul and Minneapolis, the amount of freight charged, received and retained by the railway companies from the Atlantic seaboard to Chicago, is precisely the same as the rates charged by the same railroads from the Atlantic seaboard to Chicago where the point of destination is Omaha, St. Joseph or Kansas City, which would be about 74 cents. The difference in favor of St. Paul and Minneapolis arises therefor by giving those cities a low rate from Chicago to St. Paul and Minneapolis, and charging a greater rate

from Chicago to St. Joseph, Omaha and Kansas City, and by
1453 the same lines of railroads, the same road which transport the freight to St. Paul, and Minneapolis, and which are the same roads which run to Omaha, St. Joseph and Kansas City, the distance being almost the same, the difference in distance being but a mere nominal factor and yet the rate from Chicago to St. Paul and Minneapolis is about 40 cents, while the Omaha, St. Joseph and Kansas City rate is about 75 cents, the one being nearly double the other. The conditions throughout the country through which these railroads are operated, and, necessarily following, the cost of transportation, are practically the same, and we can see no justification for so marked a discrimination. We are not complaining of the rates given to St. Paul and Minneapolis. We do not complain of that. All we ask is that we shall be equally favored by the railroad companies—that is all. It is of no disadvantage to St. Paul or Minneapolis, and it is no disadvantage to Chicago so far as we can see it in any point of view.

There is another rather startling fact. The railway companies, in transporting freight from the Atlantic seaboard through Chicago to St. Paul or Minneapolis, have the fixed rates which I have
1454 mentioned. Into the territory thence and westward of St.

Paul and Minneapolis, a rate is fixed by adding to the through rate from the Atlantic seaboard to St. Paul and Minneapolis, the rate from St. Paul and Minneapolis to the point of destination, to wit, Montana common points or Spokane and Spokane common points, about which we do not complain. But the same railroad lines will carry the same freight to Chicago and if it is booked to go through Missouri River points, such as Omaha, St. Joe or Kansas City, in order to have advantage of the same rate to Montana common points of Spokane common points, the goods cannot be stopped at Omaha, St. Joe or Kansas City, and received by Omaha, St. Joe or Kansas City jobbers, and be reconsigned to point of destination. In order to have advantage of the rates which are given to St. Paul and Minneapolis it is necessary that the goods in order to reach Montana common points or Washington common points, must pass directly through Omaha, St. Joseph and Kansas City. The result is that the jobber in St. Joseph, Kansas City and Omaha cannot deal in those goods at all, and cannot make shipments into that territory,

but the New York jobbers can take advantage of that discrimination to the extent of about 35 cents per hundred.
1455

As to the St. Paul and Minneapolis jobbers, the goods may be sent from New York to St. Paul and Minneapolis on a rate of \$1.15, and be there received by the St. Paul and Minneapolis jobber, and then he makes his consignment to Montana or Washington by paying simply the rate west of St. Paul and Minneapolis, and the rate from the Atlantic seaboard to St. Paul or Minneapolis, thus giving them an advantage in that whole territory of about 35 cents per 100 pounds on first class, and Omaha, St. Joseph and Kansas City jobbers are without means of coming in competition with them. Yet the same railway companies that carry the freight from Chicago to St. Paul and Minneapolis are precisely the same railway companies

which will carry that same freight down to Omaha, crossing the river there, and reaching the same territory—perhaps a little longer in distance, but if so, if they can afford to carry it over a longer haul for that lower rate, they can afford just as well to let it be stopped at Omaha, St. Joe and Kansas City, and let the Omaha, St. Joe and Kansas City jobbers participate in that business. Therefore under

that tariff arrangement there is a discrimination against
1456 Omaha, St. Joseph and Kansas City by the railway companies, which gives St. Paul and Minneapolis as we think, an undue advantage over the Missouri River points.

There is another feature which will develop in this case, and that is that the railroad lines in transporting freights from the Atlantic seaboard through Chicago as a distributing point, have a rate of 74 or 75 cents, which carries to what are called Missouri River points, at a rate of 80 cents, which would take in all the points on the Mississippi River from Dubuque on the north and east to St. Louis on the south. The point to that is that the railway companies have fixed a rate by which in order to make a through rate they say we will carry the goods from the Atlantic seaboard to Chicago at a rate of 75 cents, and on to the Mississippi River at a gross rate of 80 cents, which makes a rate of about 14 cents per 100 pounds on first class from Chicago to the Mississippi River crossing—that is, from Chicago to Dubuque on the north, and Chicago to East St. Louis upon the south. But if the goods pass on beyond the Mississippi River and go to Missouri River points—say Omaha,

St. Joe or Kansas City—instead of carrying the same goods at
1457 about the same rate as they do from Chicago to Mississippi

River of 14 cents approximately, it being 150 miles, it would make a rate of about 38 cents Chicago to the Missouri River points, Omaha, St. Joe and Kansas City, really less than we are asking for in this case. In other words, they are carrying freight at a published schedule rate at a much less rate for 150 miles from Chicago to the Mississippi River than we are asking them to carry it on to Missouri River points. Yet we all know it is a matter of common knowledge that the conditions are not at all dissimilar from Chicago to the Mississippi River, and from the Mississippi River to the Missouri River. Perhaps that does not have so much bearing except to show that the manner and means of transportation are not at all dissimilar, and the railroads are willing to carry freight at a rate yielding them a reasonable profit, being a rate less than we asked them to give us. The same thing is true, as will be developed in this case, if the goods be consigned to the southwestern common points. Take Texas and the whole area of territory to the southwest. We shall show as to these common points, that we have the

same kind of discrimination to the southwest that I have
1458 already described as existing to all the northwest territory.

The consequent result is that Omaha and St. Joseph and Kansas City, being located on the Missouri River, are surrounded by a territory to the northwest and by a large area of territory to the southwest, and a territory immediately surrounding these cities for a distance of about 150 miles in either direction, by which

goods can be transported into them from the Atlantic seaboard, to the Chicago markets cheaper than Omaha, St. Joseph and Kansas City can get it into these markets at its very doors.

Mr. Atwood suggest- that I emphasize the matter that the same railway company is carrying the same goods over the same lines of railroads at a rate of 38 cents and they are charging Omaha, St. Joseph and Kansas City 75 cents for the same kind of transportation over the same identical lines of roads, and with precisely the same service.

The other point I wish to speak of is one general thought, that is of more direct interest to the dry goods business than any other.

The rates on merchandise, particularly dry goods or high class goods, are higher today than the rates have been on the same classes of goods for the last seventeen years. In other words, notwithstanding the increase in traffic growing out of increased business and increased population, and the increased competition arising from the construction of new lines of railroads, notwithstanding these facts, which naturally tend to a reduction of railroad rates, there have been no general reductions in a period of seventeen years on the classes of merchandise of which I speak, yet it will develop in this case that seventeen years ago the amount of that sort of business was comparatively small, and in the dry goods business line it has so developed that in these three cities there is conducted today by reason of so great capital and energy, a business exceeding forty millions of dollars a year, and the jobbing business represented by these complainants exceeds \$125,000,000 per year; seventeen years ago the same thing amounting to a mere bagatelle; and yet the railroad companies charge these people today a rate as high as was charged seventeen years ago. We say there is no justification in this at all. The increased business itself, the increasing population, the increasing amount of traffic, should naturally, obeying the laws of trade competition, have gradually reduced the rate.

Another thought in that same connection is, I take it, a matter of common knowledge that owing to the increased facilities of transportation, larger locomotives having greater hauling powers, larger cars carrying a greater tonnage, operated by the same number of men as a train crew, would seem to naturally tend to cheapen the actual cost of transportation; yet notwithstanding that, the actual cost charged up to these Missouri River jobbers is equal to or greater than it has been during the last seventeen years, something that at least appeals to us as a justification for our claim. Not that we wish to have an advantage over St. Paul and Minneapolis, or Chicago or St. Louis, but that we wish to be placed on a level with them and enjoy equal benefits and equal facilities of transportation from place of production to place of transacting business out here, and from there to the place of consignment in conducting the trade.

If your Honors please, that is all I care to say at this time.

1461 Mr. HOLDEN: A great deal of the subject matter of this case is necessarily already well known to the Commission. I shall be very brief in the statement I shall make, but the re-

marks that have been made by the gentlemen here from the other cities in this general vicinity, Chicago, St. Paul and Minneapolis, and St. Louis, necessarily indicates, if your Honors please, the wide scope and the great ultimate results which may flow from the final decision of this case, particularly if the complaint appeals to the Commission and a reduction of the rates to the Missouri River should be ordered. It of course does not require any statement on my part, or on the part of the carriers, to call to mind the proposition that the entire commercial situation in this western country has been built up upon a relative adjustment of rates between different communities. The very appeal by the gentlemen who have come here to intervene, indicates that their communities differ from the three Missouri River cities mentioned, and are very much alive to their relative position as compared with the Missouri River towns, and the results which may flow in the event of a relative adjustment of the rates is disturbed. It naturally follows, and I have no
1462 doubt has immediately appealed to your Honors minds, that a readjustment of the relations between the Missouri River Cities and Chicago will necessarily call from the interests of Chicago, a request for a similar hearing upon their interests. From St. Paul will also come an equivalent call, and as we follow the matter west other cities such as Wichita, Denver and beyond will each want to be heard as to whether or not the present adjustment *adu* the present relations between them is not the relation that ought to be allowed to continue.

Another thought, if your Honors please: When the evidence in this proceeding is concluded, the mere matter of revenue to the carriers must of necessity be a matter on which we are entitled to be heard, and which will run into millions of dollars. Taking only the difference in the reduction of the rate asked from what it is now on the character of merchandise involved in this complaint, from the Mississippi River to the Missouri River, and I understand it amounts to about five and one-half million dollars. Reduc-
1463 tions of rates on this account and of this kind will necessarily call for reductions of intermediate rates, and necessarily call for reductions to points beyond, so that the amount of loss which the carriers will suffer necessarily must appeal to the Commission, and necessarily must give the carriers a right to ask a hearing with some patience on this proposition.

The complaint seems to be when it is boiled down to the ultimate proposition, as stated by Mr. Webster, that there is no complaint against this St. Paul rate. The complaint is that the Missouri River cities should have this same relative position. The position of the carriers, if your Honors please, is that St. Paul has a natural advantage by reason of its close proximity to the Great Lakes, by reason of its proximity to the Canadian lines of railroad crossing near there, which the Missouri River towns have no right to demand and which a mere glance at the map shows does not exist. I take issue with Mr. Webster about water competition in the Lakes. I think the evidence will satisfy you that competition is and for many years has been an

active factor throughout the year. The influence of that by the accumulation of goods for the opening of lake navigation, is
1464 felt through the year, although the lakes are closed for a part of the year, and as a result has given the lower rate to St. Paul. The steamships ply from Chicago to Duluth and the distance from Duluth to St. Paul, not being as great as distance as was indicated, but being a matter of only one hundred odd miles, and it being a short haul across there, necessarily required the carriers west of Chicago on the all rail route, to meet that competition and take less for their transportation than otherwise they would be entitled to. We take issue also as to the effect upon these rates of the Canadian and Soo lines. I understand just contrary to the statement made by Mr. Webster, that the lower rate to St. Paul is directly affected by reductions made by the Canadian Pacific taking goods from the Atlantic seaboard and from Montreal and carrying them and delivering them to the Soo Line for delivery at St. Paul and Minneapolis. The proposition is that St. Paul and Minneapolis in the very nature of thin-s, by their natural and physical situation, have an advantage which the Missouri River ought not to ask to be equalized. The St. Paul merchants, as shown by their ap-
1465 pearance here today, realize that they have that proper and natural advantage over the Missouri River cities, which should not be taken away from them. That of itself, and the intervention, as shown by the parties appearing here for the intervenors, will indicate to your minds the impossibility on the part of the carriers to have ever made the matter possible to meet the demands of these complainants, without a complete reorganization of the entire basis of rates in the whole western country. We feel when the evidence has been introduced, and the relative proportions of the situation in the different communities is seen by the Commission, as you probably have them fully in mind already, that the Commission will find that this complaint ought not to be sustained; and if it is, when the matter has all reached its ultimate end, and the hearings have been had, and the complaints of other communities have been listened to, it will appear that Kansas City, Omaha, and St. Joseph are again on the same relative basis with reference to these other communities as they are today; otherwise, unless the evidence in this case is diametrically opposite to what the carriers understand it to be—and I think they know because they
1466 have lived under the influence of water competition—unless the Commission totally ignores that effect of water competition upon rail rates this petition will not be sustained.

Something has been said about putting goods into Spokane common points, and Pacific Coast common points, as against the St. Paul jobber. It follows naturally, as the rate from Chicago to St. Paul has been forced down by water competition, that effect is felt clear to the western coast, and the same situation applies there. If that condition does exist, about which I think there is considerable doubt, but if it does exist the same answer applies, and the effect is found back again to the same point that makes the lower rate into St. Paul, as against the rate into the Missouri River points, and it follows the goods as they move further west. I think without at-

tempting to go into details as to the evidence, that indicates the position the carriers occupy. We think this rate is reasonable rate, and certainly there is offered no justifiable situation for the demand for a reduction in these rates. We think the relative adjustment throughout this whole country has worked itself out to a 1467 fair basis in the proportion of one community to another, and that the complaint made more particularly that Missouri River cities should be put upon a parity with cities like St. Paul and Minneapolis, which have a natural advantage, ought not to be sustained.

Mr. Webster, in his concluding remarks, called your Honors' attention to the tremendous growth of commercial conditions in this community, the growth of Kansas City and its dry goods trade, and the tremendous volume compared to what it was at the time of its origin. It would therefore seem to me to follow from these physical facts with which the Commission is thoroughly acquainted, that the communities have thriven under these rates and under this situation, and have not suffered from any adverse adjustment of rates.

Commissioner CLARK: You may call your first witness, Mr. Webster.

Commissioner HARLAN: Have you some map the Commissioners may have before them?

Mr. WEBSTER: Yes, sir.

(Maps were handed to the Commissioners and to representatives of the defendants.)

1468 THOMAS C. BYRNE, called as a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination.

Mr. WEBSTER: You may state your name?

Mr. BYRNE: Thomas G. Byrnes.

Mr. WEBSTER: Where do you reside?

Mr. BYRNE: At Omaha.

Mr. WEBSTER: Will you state your business?

Mr. BYRNE: I am in the dry goods business.

Mr. WEBSTER: And the name of your company?

Mr. BYRNE: The Bryne & Hammer Dry Goods Company.

Mr. WEBSTER: How many years have you been engaged in the dry goods business?

Mr. BYRNE: Well, since I was a boy—about 33 years on the Missouri River.

Mr. WEBSTER: How long in any of the cities here named of Kansas City, St. Joseph or Omaha?

Mr. BYRNE: I have been in Omaha for the past seven years.

Mr. WEBSTER: Prior to that time?

1469 Mr. BYRNE: I was in St. Joseph with the Richardson-Roberts-Bryne Dry Goods Company there.

Mr. WEBSTER: In a general way, are you familiar with the dry goods business during the period of time you have mentioned, while in St. Joseph and in Omaha?

Mr. BYRNE: Yes, sir; fairly well, I think.

Mr. WEBSTER: Have you knowledge sufficient to give a general answer as to the extent of the annual business of the dry goods houses in Kansas City or Omaha, and St. Joseph at the present time?

Mr. BYRNE: Well, I have the same general knowledge that most anybody would have of their competitors, and the probable extent of their sales.

Mr. WEBSTER: What would you state that business to be approximately?

Mr. BYRNE: There are three houses in Kansas City, four in St. Joseph, and two jobbing houses in Omaha, that job and wholesale goods exclusively. There are some others there that manufacture competing lines, and some retailers that do some jobbing. I should say that the houses that are in that business exclusively sell in the aggregate about Forty Millions.

1470 Mr. WEBSTER: Per year?

Mr. BYRNE: Annually; yes, sir.

Mr. WEBSTER: About what percentage of that business is consumed in freight rates or freight charges?

Mr. BYRNE: Well, we usually estimate that our freight is about three to three and one-fourth per cent of our total sales.

Mr. WEBSTER: And about what percentage of the gross cost of doing your business is made up of freight charges?

Mr. BYRNE: I think our freight charges are nearly twenty per cent of our total outlay.

Mr. WEBSTER: You mean twenty per cent of your total expenses for doing business?

Mr. BYRNE: Yes, sir.

Mr. WEBSTER: You use the word "outlay" with reference to expense account?

Mr. BYRNE: Yes, sir; that is a trade term. I might say twenty per cent of the total expense.

Mr. WEBSTER: I will ask you if you can to state what about is the percentage of expense of your business—the percentage upon your entire business represented by the expense account?

1471 Mr. BYRNE: Well, of course, that fluctuates as to the value of the merchandise at times. I might have answered in that way in regard to freight. When merchandise is high, as it is at present, our freight account is not as large a percentage because the tonnage for a given amount of sales is lighter. But I did not answer your question: I should say in the neighborhood of 13 per cent. Some expense of operating in some places is a little lighter than at others.

Mr. PEIRCE: I did not quite understand that 13 per cent. Ask him again so as to get it into the record straight.

Mr. BYRNE: That also is another thing maybe I should explain. When dry goods men speak of their expenses they speak in a general way of their percentage of expenses against their sales.

Mr. WEBSTER: You estimate that to be about 13 per cent?

Mr. BYRNE: A house doing business on a basis of two million dollars would spend \$260,000. That is approximately 13 per cent.

Mr. WEBSTER: That includes rent, taxes and all other charges?

1472 Mr. BYRNE: Yes, sir; and interest charges.

Mr. WEBSTER: And of that entire expense about 20 per cent is consumed on account of freight charges?

Mr. BYRNE: Maybe a little more than that, because we estimate our freight is about three per cent of our sales.

Mr. WEBSTER: Three per cent of your sales?

Mr. BYRNE: Yes, sir.

Mr. SPENCER: What per cent of your sales is the total expense?

Mr. BYRNE: That is what I just answered.

Mr. SPENCER: What per cent is that?

Mr. BYRNE: 13 per cent. It may run a little more than that with some houses, and with other houses a little less.

Commissioner CLARK: The total per cent of expense is 13 per cent of your sales?

Mr. BYRNE: I should say the total expenses are about 13 per cent of our sales.

Commissioner CLARK: That includes your freight bills?

Mr. BYRNE: Yes, sir. When I said our freight is 20 per cent of the whole, I might have been a little wide of the mark, because our freight is three per cent or a little in excess of three per cent of our total sales.

Mr. ELLIS: That would make your freight about 25 per cent of your total expenses?

Mr. BYRNE: No, sir.

Mr. ELLIS: Not 25 per cent of the total expenses?

Mr. BYRNE: Three per cent of our sales would be less than 25 per cent of our total expense. 25 per cent of 13 per cent would be three and one-fourth per cent.

Mr. PEIRCE: Does that mean of freight in one way?

Mr. BYRNE: That is the only freight we pay. Some houses who enjoy a lower rate than we do, pay freight into our territory because they can afford it. That might have been unnecessary, but I mentioned it, because that goes into the account of a jobbing house.

Mr. WEBSTER: You may describe the territory in a general way through which the dry goods houses in these three cities do their business, and you may, if you care to, refer to the maps which have been placed in front of the Commissioners, and copies of which have been furnished the attorneys for the railroad.

Mr. BYRNE: In the territory we occupy we work about 1474 200 miles east of Omaha in a circle. We work that by traveling salesmen, who work from 30 to 50 towns each. The territory we work west from Omaha lies in a fan-shaped country west and northwest and southwest from Omaha, covered by the roads that radiate from Omaha to the west. We work into Dakota and Montana, Idaho, Washington, Oregon, Utah and Colorado, Wyoming, Nebraska, and part of Kansas. On the east of us we work southern Minnesota, and a semi-circle into Iowa and Missouri.

Mr. WEBSTER: As to the St. Joe houses, do they work through the same territory in a general way?

Mr. BYRNE: Yes, sir; about in the same relative position I should say from their market.

Mr. WEBSTER: How is it as to Kansas City?

Mr. BYRNE: I should say about the same. They may probably extend further southwest, because their roads are more tributary to that country.

Mr. WEBSTER: Going back to what you said with reference to the northwest, Montana, Spokane and so on, what lines of railway, if any, furnish you a direct connection from Omaha into that territory?

Mr. BYRNE: I think we usually send goods out of Omaha 1475 into that territory over the Burlington and over the Union Pacific. We make transfers wherever it is necessary.

Mr. WEBSTER: You have some lines of railroad that reach into that country radiating from Omaha?

Mr. BYRNE: Yes, sir.

Mr. WEBSTER: And St. Paul and Minneapolis have three or four lines reaching into that same territory in the northwest?

Mr. BYRNE: I could not answer that question very well. I think they have two or more; yes, sir.

Mr. WEBSTER: Now, for the purpose of getting at something else, I want, do you know, and if so you can state what is the rate from the Atlantic seaboard to St. Paul and Minneapolis, say on first class. We will not go into details as to the others now.

Mr. BYRNE: I think the published tariff is \$1.05 first class.

Mr. WEBSTER: What is the same published tariff from Atlantic seaboard to Omaha, St. Joseph and Kansas City?

Mr. BYRNE: \$1.47.

Mr. WEBSTER: In making shipments from Omaha into 1476 Montana common points and Spokane common points, what advantage, if any, has St. Paul and Minneapolis over the Omaha, St. Joe and Kansas City jobbers?

Mr. BYRNE: I am not sure on outgoing freight whether they have any.

Mr. WEBSTER: How is that?

Mr. BYRNE: I am not sure on outgoing freight whether they have any, unless they get an advantage which they do in some cases where they can afford to—

Mr. WEBSTER (interrupting): Perhaps you do not comprehend what I am trying to get at. Is not the rate from Omaha and St. Joe to Spokane common points added to the \$1.47? In other words, does or does not the St. Paul and Minneapolis jobber have a saving of the difference between \$1.15 and \$1.47?

Mr. BYRNE: As I understand it, they do.

Mr. WEBSTER: That would make a difference in favor of the Minneapolis and St. Paul jobber of about 32 cents per hundred pounds on first class?

Mr. BYRNE: Between our rates and theirs; yes, sir.

Mr. WEBSTER: If you are able to state, you may state about what the advantage of saving would be to the St. Paul or Min- 1477 neapolis jobbers from a given point over the Omaha, St. Joseph or Kansas City jobbers, on a business of \$5,000,000 per year?

Mr. BYRNE: I should say three-fourths or four-fifths of one per cent.

Mr. WEBSTER: That would be how much in round figures?

Mr. BYRNE: On a business of \$5,000,000 that would be about \$40,000.

Mr. WEBSTER: How do you manage that sort of competition in that territory?

Mr. BYRNE: Well, we have to meet it by a loss in our profits.

Mr. WEBSTER: Does that loss of profit apply to all the jobbers in these three Missouri River cities—that is, does it apply to St. Joe and Kansas City as well as to you people in Omaha?

Mr. BYRNE: Yes, sir. I think I ought to explain that, as it belongs to the jobbing business of dry goods. On lower classes of freight it is possible in arriving at the cost of the goods, hardware, nails, and groceries, and such things, by adding the actual freight to the cost of a pound of metal or merchandise, or whatever 1478 it may be. In the dry goods jobbing business a large percentage of our people have prices which are restricted, and it is impossible to do a jobbing business at Omaha or any western point unless we make exactly the same selling price on the merchandise that is made in St. Louis, St. Paul and Chicago. The freight, for instance, on a yard of seven yard cotton goods or a yard of calico, which weighs seven yard- to the pound, would be so small that we could not compute it, but in a year's business a difference of three-fourths or four-fifths of one per cent would cost on a business of \$5,000,000 about \$40,000, when we meet their market, and we have to come in contact with them.

Mr. WEBSTER: Now do you know whether in the territory more immediately surrounding Omaha, St. Joseph and Kansas City, to wit, the territory that you have described as the surrounding territory in which you do business, there is any discrimination in freight rates against jobbers in the three cities mentioned, and if so, what it is?

Mr. BYRNE: We have never complained of a discrimination on outgoing freight from any of the markets. The total to the 1479 points we sell goods in is lower when goods are sold through St. Louis or St. Paul, than it is when they come from the Missouri River crossings.

Mr. WEBSTER: You perhaps did not comprehend what I want to get at. Taking the points which are shown in the map laying before the Commissioners and calling your attention to the towns which are marked on that map on lines radiating from Omaha, St. Joe and Kansas City, what is the fact as to whether it is possible, on goods coming in from Chicago on the east, St. Louis on the south, Minneapolis and St. Paul on the north, to get into that territory at rates cheaper than the Omaha, St. Joe or Kansas City people can get into that same territory on?

Mr. BYRNE: You mean from the standpoint of the jobber?

Mr. WEBSTER: Yes, sir.

Mr. BYRNE: I discovered some time ago that from the seaboard to Falls City by way of St. Louis it is very much cheaper than to St.

Joe, Omaha, and Kansas City. I think the published tariffs prove that.

Mr. WEBSTER: Isn't that true, perhaps not to the same percentage, but is the fact not true to all the other towns marked on that map?

1480 Mr. BYRNE: I haven't those figures in my mind sufficiently to answer that question.

Mr. PEIRCE: Will you have the towns called so as to get them in the record?

Mr. WEBSTER: I will do that later.

Commissioner HARLAN: Mr. Webster, do you mean that the through rate from New York to the points you have in mind, is less than the through rate to St. Joe and Omaha, and the local added to those same points?

Mr. WEBSTER: Yes, sir. That is shown by the tariffs. Mr. Byrne; you may state as an experienced merchant, in a general way, and as much in detail as you can without occupying too much time, what are the disadvantages in freight the jobbers in Kansas City, Omaha and St. Joe suffer, growing out of the present railroad rates; in other words, I will put another form of expression: Whether or not these three cities are in what might be called a pocket, and if so, explain how that is.

Mr. BYRNE: It is a very easy to explain if the map is spread out there. I think somebody familiar with rates could explain that better than I can, but the fact is that a St. Paul house can go into

1481 Omaha territory with a total freight to the consuming point from the seaboard, at a very much lower rate of freight than we can through Omaha to these same points which are nearer to Omaha. That is in like manner true from St. Louis. St. Louis

enjoys a first class rate of 87 cents for a haul of 1100 miles, and we pay 60 cents for a haul of approximately 300 miles, in addition to the 87 cents, so that their freight rate at St. Louis enables them to get into our eastern and southern territory at a very much less cost.

Commissioner HARLAN: Do you know at what points between St. Louis and Omaha the rates meet?

Mr. BYRNE: We have asked a witness here to prepare a map on that, and I think he can illustrate it better than I can.

Commissioner CLARK: Do I understand you to say, taking the first class merchandise, that it can be shipped to St. Louis—

Mr. PEIRCE (interrupting): Where is Falls City?

Commissioner CLARK: About two hours' ride west of St. Joe in northwestern direction. Do I understand you to say that this first class merchandise can be shipped from the seaboard to St. Louis and jobbed from St. Louis to Falls City on local rates at less freight charges than the same goods can be shipped from the seaboard to Kansas City, and sent from Kansas City to Falls

1482 City?
Mr. BYRNE: Yes, sir.
Mr. WEBSTER: Is not that true except perhaps with a few exceptions as to all the other towns which are shown on that map, either

coming from St. Louis to these towns, or through Chicago to these towns, as it may happen to be?

Mr. BYRNE: I am aware that map was made to illustrate that, and I think that shows that, although I would not be able to testify to it.

Mr. WEBSTER: I will say to the Commission that the map which lies underneath has the rates showing these discriminations.

Mr. BYRNE: If it is desirable to get those figures, I might get them now.

Commissioner CLARK: For the benefit of counsel on the other side, I will state the towns more prominently mentioned here are, near Kansas City and Omaha, Table Rock, Dunbar, Lincoln, Ashland, Red Oak, Hamburg, Corning and so on up as far as the Minnesota and Iowa State lines, which as far as the map shows is where it reaches, and then out as far as Crete and Chester, Nebraska.

Mr. SPENCER: Your question was about Sioux City?

1483 Commissioner CLARK: Falls City. I wanted to get this witness' statement clear and distinct so as to test the accuracy of his knowledge on the cost by a concrete base.

Mr. ELLIS: We are under the impression here that the witness stated the same proposition two different ways, but he has misunderstood the question at one time or the other, as to whether the sum of the locals from New York to St. Louis, and St. Louis to Falls City, is less than the sum of the locals from New York to St. Joe and St. Joe to Falls City.

Commissioner CLARK: He said that the rate from New York to St. Louis plus the local from St. Louis to Falls City was less than the rate from New York to Kansas City plus the local from Kansas City to Falls City.

Mr. ELLIS: We understood him to state in the first instance that the through rate from New York to Falls City—

Commissioner CLARK (interrupting): There is no such a thing as a through rate. These rates all break at Chicago and the Mississippi River.

Mr. ELLIS: Falls City takes the Omaha rate?

1484 Mr. BYRNE: In answering the question I did, I am assuming these goods are dealt in by jobbers through St. Paul, Chicago and St. Louis, and are not Missouri River matters, and the freight to the consumer at the country town is the total to the jobber, and from him to the retailer.

Commissioner CLARK: That was the purpose in asking him to go back and re-state the proposition. He stated definitely in answer to my question that the goods could be shipped from New York to St. Louis, jobbed at St. Louis, and re-shipped to Falls City at a less total freight rate than the same goods are carried from New York to Kansas City, jobbed at Kansas City, and re-shipped to Falls City. He made that statement plain and distinct.

Mr. BYRNE: I will repeat this first class merchandise from New York to Omaha and from Omaha to Falls City costs the retailer or somebody \$1.87. By way of St. Louis it costs \$1.47. That is what I am getting at. Falls City is about 100 miles from Omaha.

Mr. PEIRCE: You can ship from New York to St. Joe and then to Falls City for less than you can ship to Omaha and then to Falls City?

1485 Mr. WEBSTER: Mr. Byrne, state if you have any knowledge on the point as to whether or no there has been any reduction in the freight rates on dry goods first class during the last 17 years, or whether or not the rates have remained substantially the same during the period of 17 years, notwithstanding the increased traffic and the increased railroad competition?

Mr. BYRNE: My memory goes back a little further than that in the freight business. I used to be receiving clerk for the Britton-Richardson Company in St. Joseph. I think then that the first class rate to the Missouri River 25 years ago was \$1.37. It was later advanced five cents, and then sometime in the seventeen year period you spoke of, five cents more and is now \$1.47.

Mr. WEBSTER: Commencing with that period of time, how many railroads entered St. Joseph, Omaha or Kansas City, so far as you are able to state?

Mr. BYRNE: My recollection is in the early eighties, St. Joseph had the Burlington Road, and I think what was then known as the North Missouri, afterwards the Wabash and then the Santa Fe. Omaha had at that time, I think, the Burlington and the Chicago & Northwestern, and the Rock Island. The Burlington has now two
1486 lines into Omaha from the east and southeast and the Wabash and the Chicago, Rock Island & Pacific, Chicago, Milwaukee & St. Paul, Chicago Great Western, Chicago & Northwestern, and the Illinois Central, all enter there, all making a terrible fight for business.

Mr. WEBSTER: You may state whether or not there is any particular hazard in the transportation of dry goods—that is to say, whether any loss might attend the shipment of dry goods?

Mr. BYRNE: I do not think our claims for loss and damage on dry goods this year will amount to \$200 on a business of upwards of two and a half millions.

Mr. WEBSTER: If there is anything you have in mind which you desire to state, that will bear upon the question I will ask you to state it?

Mr. BYRNE: Nothing at this time, I believe.

Cross-examination:

Mr. HOLDEN: You say you never have had complaints about your outbound rates from your jobbing houses?

1487 Mr. BYRNE: You mean to the retailer?

Mr. HOLDEN: You made that statement, I understand.

Mr. BYRNE: Not in the territory we try to reach, we do not have much trouble.

Mr. HOLDEN: You have the same relative adjustments to these Montana and Idaho common points you were speaking of, as St. Paul and Minneapolis, do you not?

Mr. BYRNE: I could not answer that question. I think in most cases where the distance is equal we have a similar rate.

Mr. HOLDEN: Don't you know whether or not your rates into Montana points are the same or greater or less than these St. Paul houses you come in competition with?

Mr. BYRNE: About the same, I think, to the same points.

Mr. HOLDEN: You do not know whether they are the same or just about the same? Haven't you looked into that matter to ascertain on what basis the competitors you come in contact with are selling at these points?

Mr. BYRNE: Oh, yes; I have.

Mr. HOLDEN: Well, are they the same or not?

Mr. BYRNE: To which point?

Mr. HOLDEN: You spoke of Montana common points and Idaho points in response to questions by Mr. Webster.

1488 Mr. BYRNE: I think where they are equally distant the rates are about the same.

Mr. HOLDEN: Take Helena and Butte, what is the rate from Omaha?

Mr. BYRNE: That is a matter of public record. I would rather have somebody who has those rates in mind answer that question.

Mr. HOLDEN: You sell off into that country?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: Do you meet St. Paul houses out there?

Mr. BYRNE: We hear from them; yes, sir.

Mr. HOLDEN: Do you know whether they have the same rates you do, or whether you have a different rate from them?

Mr. BYRNE: I will have to answer that as I did before. That is a matter of public record.

Mr. HOLDEN: That is a matter of public record, but isn't it impressed upon your mind as to whether you have the same or a different rate from those people you compete with?

Mr. BYRNE: Where we have a higher rate we are compelled to equalize sometimes.

1489 Mr. HOLDEN: You cannot answer whether Omaha and Kansas City do not have relatively and practically the same rates from your jobbing houses as St. Paul and Minneapolis?

Mr. BYRNE: That question is of a too general nature because there are so many different points. Ask as to some particular point.

Mr. HOLDEN: I asked as to Helena and now I will include Anaconda, Lewiston or Spokane, Walla Walla, Pendleton, Portland, or any points where you do business.

Mr. BYRNE: In a general way I can tell you of course our rates are fairly satisfactory out there, but there is too much data for me to undertake to carry it in my mind.

Mr. HOLDEN: Your rates are fairly satisfactory in your relation with St. Paul and Minneapolis houses?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: The difficulty you have is on your inbound rates as compared with the rates to St. Paul and Minneapolis?

Mr. BYRNE: Being one of the complainants I might say our contention—

Mr. HOLDEN (interrupting): I am not asking that. I say
1490 the difficulty you claim to labor under is you have a higher
rate than St. Paul and Minneapolis on your inbound ship-
ments?

Mr. BYRNE: That is the complaint we are making.

Mr. HOLDEN: The rate to Chicago is the same from the Coast as
was stated here, whether the freight goes to St. Paul or Minneapolis,
or Missouri River points?

Mr. BYRNE: That is my understanding.

Mr. HOLDEN: So the whole controversy is as to the rate from Chi-
cago to the different points in question?

Mr. BYRNE: I would not want to ask you direct how the rates
should be remedied, but our rates from the seaboard are higher than
they are to St. Paul.

Mr. HOLDEN: Of course, we do not make the rates from the sea-
board. You spoke of Falls City, Nebraska. The Missouri Pacific
runs through Falls City as going from St. Louis to Omaha, doesn't it?

Mr. BYRNE: I think it does.

Mr. HOLDEN: And therefore under the fourth section of the Inter-
state Commerce Act, Falls City gets the Omaha rate?

Mr. BYRNE: I am not sure about that.

Mr. HOLDEN: It does get the Omaha rate, doesn't it?

1491 Mr. BYRNE: I don't know about that. I say the rate is
cheaper than ours from Omaha to Falls City.

Mr. HOLDEN: Do you know about your adjustment of rates to
Hastings, Nebraska?

Mr. BYRNE: I think it is illustrated there.

Mr. HOLDEN: You do not care to testify about that? All right.
You say, Mr. Byrne, that a certain percentage of your sales are all
staples. What do you mean by that?

Mr. BYRNE: Well, in any mercantile transaction, or any job-
bing house, some lines of goods are more staple and less liable to
fluctuation than others. In our goods the staples are cotton piece
goods mainly. There are staples in all lines, in the way of cotton
goods, as to hosiery and underwear and so forth, that are used all
the year round, and they become known as staples.

Mr. HOLDEN: How do you buy those? How is your method of
purchase operated? How do you buy your staples—delivered at
your house, or where—I mean cotton piece goods.

Mr. BYRNE: There are different manufacturers in different parts
of the country that make prices on a different basis. Of
1492 course the freight all enters into the goods.

Mr. HOLDEN: Take some illustrated case, and tell us just
how the process is as you handle it, and how the prices are made
to you?

Mr. BYRNE: To make it perfectly plain to a man not in the busi-
ness, I might say it is customary for New England mills to make
Boston and New York a point of shipment, and when we buy goods
at New England, as a general proposition, we understand we pay the
rate from the seaboard point. It is as it is now. It has not been
customary in this business for the eastern mills to pay the freight.

They will equalize the New York or Boston rates, equalize the New York or Boston rate from the mills, or from the interior points. The freight on first class goods is \$1.47. As the cotton manufacturing business developed in the south, it became the custom for southern mills to deliver goods in New York, and on account of their distance from New York or Philadelphia or Boston, they afterwards, as the custom developed, have delivered them in St. Louis, Chicago, Kansas City, St. Joe or Omaha, but when we buy the same article of New England, such as we buy in Georgia, 1493 the freight being higher and the manufacturer absorbing it, he asks us a higher price for the merchandise.

Mr. HOLDEN: So the manufacturer in New England equalizes the New York rate to you?

Mr. BYRNE: If his commission house is in New York, he usually sells the goods at New York. Some manufacturers sell goods through New York commission houses, and some sell goods direct.

Mr. HOLDEN: Don't you take actual delivery at the mills in New England? Isn't the New York delivery a mere theory and isn't the local rate from the mill into New York taken off of your price?

Mr. BYRNE: Not in all cases.

Mr. HOLDEN: In most cases?

Mr. BYRNE: No, sir; not in most cases. It is in some cases. I simply used the illustration to explain to you how it became customary for southern mills to add the freight to the price of the goods.

Mr. HOLDEN: This question of milling in the east—the New England mills do not ship their goods literally to New York and you take them from there to your place at \$1.47 rate?

1494 Mr. BYRNE: Some of them have warehouses in New York and ship goods from there.

Mr. HOLDEN: In the majority of cases isn't it the other way, that the actual delivery to you is taken at the same place, at the mill platform in places like Lawrence and such town in New England, and the price to you is equalized on the New York rate?

Mr. BYRNE: That is a fact.

Mr. HOLDEN: That comes off of your rate?

Mr. BYRNE: Off of our rate and the St. Louis rate and the Chicago rate.

Mr. HOLDEN: Take the southeastern cotton mills, theoretically at one time they had to make a theoretical New York delivery, didn't they, to compete with New England mills?

Mr. BYRNE: I assume that is what the custom of paying the freight grew out of.

Mr. HOLDEN: How are those goods from southeastern mills actually handled into your house?

Mr. BYRNE: Some F. O. B. at the mills, and others delivered at the jobbing point.

Mr. HOLDEN: You mean at Omaha?

1495 Mr. BYRNE: Sometimes; yes, sir.

Mr. HOLDEN: In some purchases, some of them are delivered to you at Omaha?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: That is on a basis that competes with cotton piece goods from New England or at a lower price?

Mr. BYRNE: I just explained to you that where the freight is paid, it must be very plain to any man that the mill who pays the freight must add it to the cost of the goods.

Mr. HOLDEN: What is the rate on cotton piece goods from South-eastern mills in Georgia?

Mr. BYRNE: That depends on what milling point it is.

Mr. HOLDEN: There are certain common points down there, aren't there?

Mr. BYRNE: About 85 cents from Georgia and North Carolina, at various times.

Mr. HOLDEN: 85 cents to Omaha?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: On that staple of cotton piece goods delivered to you from southeastern mills at 85 cents in Omaha?

1496 Mr. BYRNE: Yes, sir.

Mr. HOLDEN: What is the difference in the cost of the same class of goods bought at the New England mills and at the southeastern mills in Georgia, for instance?

Mr. BYRNE: I don't understand you.

Mr. HOLDEN: These mills make primarily the same quality of goods, the same in New England as in Georgia?

Mr. BYRNE: You will have to name some item.

Mr. HOLDEN: You are in the business. You know what I am driving at. Give me a typical kind of cotton piece goods, manufactured in both places, that you handle—denims?

Mr. BYRNE: Take what we call four yard brown cotton, plain brown sheeting weighing four yards to the pound, of relative fineness.

Mr. HOLDEN: What is the difference in the price in the New England production and the southeastern production?

Mr. BYRNE: If we pay the agents price at New York or New England, we buy the goods cheaper than if we pay the price to the southern mills who pay the freight.

Mr. HOLDEN: What is the difference in the F. O. B. cost at the mill on these goods between those two districts?

1497 Mr. BYRNE: Do you think the southern mills could sell for any length of time—

Mr. HOLDEN (interrupting): I want you to tell me what difference there is, if any?

Mr. BYRNE: That is a proposition to be answered by most any sane man—

Mr. HOLDEN (interrupting): Well, perhaps we do not belong to the class of sane people, so assume we are not in the same class.

Mr. BYRNE: When the southern manufacturer pays the freight on the same quality of goods, he gets a higher price equal to the amount of freight.

Mr. HOLDEN: What is the difference to you whether you buy in New England, or in the southeast?

Mr. BYRNE: I might answer that question by saying that the same thing that takes these to any jobbers—

Mr. HOLDEN (interrupting): What I am trying to get at is, what it is that dictates to you whether you buy in the southeast or in New England?

Mr. BYRNE: The same thing that would dictate to any jobber, I say. He runs on certain lines of goods, on a line of brown 1498 sheetings, I might say, and where we use ten or twelve or fifteen brands, there are probably two hundred made, and we may have a run of goods, a line of goods made under a certain brand for us, or they put a brand on them, and where we deal with certain manufacturers, and their dealings are satisfactory, and the goods are satisfactory, we keep running on those lines of goods.

Mr. HOLDEN: Do I understand by that at certain times you buy more or less exclusively in New England and at other times you change you- place of purchase and deal with the southeastern mill men?

Mr. BYRNE: Of recent years the New England manufacturers have made fewer of these heavier staple goods. We have worked a little harder from the south on them. Those people who go after the business usually get some of it.

Mr. HOLDEN: You select your point of purchase largely by the character of goods and the way in which the particular mill man will follow your wishes in putting on your particular brand, and things of that kind?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: That is all that enters into the selection of 1499 the different districts in which you make your purchases?

Mr. BYRNE: That all enters into it and I can say that it does entirely, because twenty different manufacturers might make what we call brown cotton of equal fineness, and of the same quality of cotton, but we would not want all brands.

Mr. HOLDEN: Of recent years the New England mills have not been making the quality and kinds of goods you use, and you have been using the southeastern man's mostly?

Mr. BYRNE: The manufacturer of coarse goods has not been so extensive in the east as in the south.

Mr. HOLDEN: The increase of southeastern mills have been very marked in recent years, hasn't it?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: Your purchases have been a good deal larger in the southeast than in New England, for that reason.

Mr. BYRNE: I think the growth of certain business down there has been very great; yes, sir.

Mr. HOLDEN: These goods are all bought on a freight rate 1500 into Omaha or Missouri River points, of 85 cents as a fair illustration?

Mr. BYRNE: That freight point depends on where they are shipped from. I think from the freight points in North Carolina, for instance, it is about 85 or 87 or something of that kind.

Mr. HOLDEN: This brown cotton sheeting—is that the right term?

Mr. BYRNE: Brown sheeting.

Mr. HOLDEN: Four yards to the pound—what is the average price of that per yard, new, bought at the mills?

Mr. BYRNE: I think about six and a half cents.

Mr. HOLDEN: A yard?

Mr. BYRNE: Yes.

Mr. HOLDEN: How many yards in a piece?

Mr. BYRNE: They run about 50 yard lengths.

Mr. HOLDEN: Now you spoke about a number of your staples that you were compelled to sell at the same profits under some arrangement with the manufacturers, as other cities such as St. Paul and Chicago. Do I correctly quote your answer?

Mr. BYRNE: Many lines of goods; yes, sir.

1501 Mr. HOLDEN: Is that true of cotton piece goods, such as we speak of?

Mr. BYRNE: We had to sell the goods as cheap as the markets on the north and south of us.

Mr. HOLDEN: Give us a little more detailed explanation of that situation, naming some of the other goods and the markets in which you have to sell at the same price?

Mr. BYRNE: I might say that quite an important line of goods is what is known as American Prints, made by the American Printing Company at Fall River.

Mr. HOLDEN: That is quite an important line in your business, is it not?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: Just explain what the trade arrangement is that regulates the price at which you sell?

Mr. BYRNE: The manufacturers restrict the prices of these goods. There is no trade agreement on those goods at all.

Mr. HOLDEN: Then let us have that arrangement?

Mr. BYRNE: The manufacturers sell the goods to us less a discount and we sell them at the long price.

Mr. HOLDEN: Will you give us a typical price and the amount of discount, so we can get at this?

1502 Mr. BYRNE: Well, say 6 cents less 10 per cent.

Mr. HOLDEN: 6 cents a yard?

Mr. BYRNE: Yes, sir. Just at this time they are a cent higher than that—the average price is about six cents.

Mr. HOLDEN: And under the restrictions of the price you are required to sell at what price?

Mr. BYRNE: We sell at the manufacturers long price.

Mr. HOLDEN: You mean by that what—we belong again to the insance crowd that does not understand what you mean by some of these terms.

Mr. BYRNE: The manufacturers make the price of six cents less 10 per cent, with the understanding we sell at list price.

Mr. HOLDEN: At six cents, you mean?

Mr. BYRNE: Yes; or whatever the list price is.

Mr. HOLDEN: If it is seven, they sell at seven less the discount to you?

Mr. BYRNE: Yes.

Mr. HOLDEN: Your profit for handling is in the discount?

1503 Mr. BYRNE: Yes, sir. That is what is called a trade discount. Understand, this is no jobbers agreement.

Mr. HOLDEN: I do not intimate that for a minute.

Is that method of sale true in sales by the American Printing Company to jobbers in Chicago?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: They will sell at six cents?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: Less the 10 per cent discount?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: They get the same discount you do?

Mr. BYRNE: Approximately 10 per cent. Sometimes these discounts vary, and they may be five and five, or five and two and a half and two and a half, and so on.

Mr. HOLDEN: That would be true of the St. Louis jobbers?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: And the St. Paul and Minneapolis jobbers?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: And Kansas City and St. Joe?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: You all buy at the long price, called six cents and seven cents, say?

1504 Mr. BYRNE: Yes, sir.

Mr. HOLDEN: With a stated discount approximately 10 per cent?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: What other large or prominent staples in your business, can you mention, which are handled in the same way?

Mr. BYRNE: I think that is a sufficiently important item.

Mr. BYRNE: It does not strike me quite that way, unless the Commission indicates that they are satisfied. I should like to go a little further as to the staples you have reference to.

Mr. BYRNE: I mentioned that arrangement, because that is about the way we do business as compared with the markets north and south of us. In that particular line I know the profit on that is absolute, and the freight is the same under all circumstances.

Mr. HOLDEN: How many other lines of your goods are handled in the same way? Is it true that denims and cotton sheetings are?

1505 Mr. BYRNE: No, sir; not with either of those. There are no restrictions on those lines of goods. There are certain lines of ginghams which are an important line of goods in the dry goods staples.

Mr. HOLDEN: What is the arrangement there?

Mr. BYRNE: Where the price is restricted, the method is about the same as that employed by the American Printing Company.

Mr. HOLDEN: On denims you say the price is not restricted. How do you make your purchase of that? Is it not as a practical matter at a stated price which you have to meet?

Mr. BYRNE: The lines of goods I spoke of are pattern fabrics and are seasonable fabrics. The denim is a thing like wheat, that fluctuates.

tuates the year round, and the price is a matter of negotiations at all times.

Mr. HOLDEN: Pattern fabrics are goods made at all seasons of the year and different patters at different seasons?

Mr. BYRNE: As a general proposition.

Mr. HOLDEN: You say you sell in a radius out of Omaha to the east in a semi-circle, reaching into southern Minnesota. Give us a little more detail with reference to that?

1506 Mr. BYRNE: We go into southern Minnesota and northwestern Iowa. We extend a little ways east of Des Moines, which is about halfway across the State.

Mr. HOLDEN: What competition do you meet in Iowa?

Mr. BYRNE: St. Louis, Minneapolis, Chicago and St. Paul.

Mr. HOLDEN: Give us the names of three or more towns in this district where you meet competition with Chicago, St. Louis and St. Paul?

Mr. BYRNE: Where we come in contact with them?

Mr. HOLDEN: Yes.

Mr. BYRNE: Well, sir, in the radius that I described we meet them at almost every point.

Mr. HOLDEN: Just give us the names. You are familiar with them, so give us the names of a few of those towns?

Mr. BYRNE: You might say at Larms, Iowa, Audubon, Iowa, and Holstein, Iowa.

Mr. HOLDEN: Can you name two or three Minnesota points, or two or three Missouri points?

Mr. BYRNE: I haven't those in mind just at this minute.

Mr. ELLIS: Pipestone?

1507 Mr. HOLDEN: Can't you give us the name of one or two?

Mr. BYRNE: I don't believe I will undertake to do that.

Commissioner CLARKE: Would you include Des Moines in your Iowa towns?

Mr. BYRNE: Yes, sir; Mr. Commissioner, and Harlan, Iowa.

Mr. HOLDEN: You cannot name any Minnesota points?

Mr. BYRNE: Red Oak, Creston, and Shenandoah, all in Iowa.

Mr. HOLDEN: We have had sufficient of Iowa perhaps to cover the situation. I would like to have a point in Minnesota.

Mr. BYRNE: I will explain why I cannot give these points: It is because the selling end of our business is not under my control, and I am not quite as familiar with these points.

Mr. HOLDEN: Describe the business again, and state how much of Minnesota you reach?

Mr. BYRNE: I think the southwestern counties—one or two.

Mr. HOLDEN: Can you give us one point in Minnesota so we can look it up?

1508 Mr. BYRNE: I won't undertake to name any Minnesota points.

Mr. HOLDEN: Will you familiarize yourself during the progress of the case, and give us some such names?

Mr. BYRNE: Yes, sir.

Mr. HOLDEN: Can you name any Missouri points?

Mr. BYRNE: Oh, yes.

Mr. HOLDEN: Name a few of those where you meet the competition of Chicago, St. Louis and St. Paul?

Mr. BYRNE: Maryville, Missouri; Carkil, Missouri; Fairfax, Missouri; Forest City, Langdon, Watson, and Maitland.

Mr. HOLDEN: How far east in Missouri do you meet this competition?

Mr. BYRNE: The Iowa and Missouri line I think is about 50 miles from Omaha.

Commissioner CLARK: Where you buy these goods on this discount, and sell at the manufactures long price, does your 10 per cent include freight rates paid by you, or is that 10 per cent exclusive of the freight on these goods?

Mr. BYRNE: Everybody pays all the freight on these 1509 goods from Fall River to the jobbing points.

Commissioner CLARK: Your 10 per cent is inclusive of all charges?

Mr. BYRNE: No, sir; we pay all our charges out of the 10 per cent.

Commissioner CLARK: It is inclusive of all charges to have the goods laid at your door?

Mr. BYRNE: No, sir; we pay the freight out of that.

Commissioner CLARK: You pay the freight out of the 10 per cent?

Mr. BYRNE: Yes, sir. The jobber pays all the freight from Fall River on those goods to his commercial centre.

Commissioner CLARK: Is it or is it not a fact that on many of these staple cotton piece goods, including cotton prints, there is actual competition between the products of the New England mills and the products of the Southern mills?

Mr. BYRNE: Yes, sir; on certain lines of sheeting more particularly. On the better grade of fine sheeting there is quite a strong rivalry.

Commissioner CLARK: How as to cotton prints?

Mr. BYRNE: There are no printers in the south. There are 1510 some gray cloths made in the south, but they are sold almost exclusively to printers in New England.

Commissioner CLARK: Then for the gray cloths, as you refer to, as being manufactured in the south and printed at some point on the Ohio river and jobbed in the west, would directly and successfully and actually compete with like prints from New England.

Mr. BYRNE: I would like to explain to you there is only one point of the Ohio River which I think is Wheeling, that does any printing. There is a concern there established 30 or 40 years ago that makes *stiffes* German prints, and they stand almost alone. The American Printing Company makes some heavy printed cloths that are used mostly by foreigners, Bohemians, Russians, and so forth, in the west, and we manufacture them into shirts for the workingmen.

Commissioner CLARK: Isn't some of that printing done at Covington, Kentucky?

Mr. BYRNE: I think so, but I think that is mostly local. There is a concern in Iowa, too, I think, over near Cedar Rapids, that does some printing, but their business is local and with retailers. They

make the same character of goods. I think that Wheeling, 1511 and probably Covington, there probably is, but it is not a large factor in the business. The gray cloths are made for those either in New England or the south mainly.

Mr. HOLDEN: In the shipment of your goods from the seaboard, what different routes do you ordinarily patronize? I do not mean specific names of any company, but just generally?

Mr. BYRNE: You mean into Omaha, or the direction of the routes, or the names of the lines?

Mr. HOLDEN: I don't care about the names of lines, but how do you ship in most cases?

Mr. BYRNE: From New York, for instance?

Mr. HOLDEN: Yes.

Mr. BYRNE: Most of our shipments from New York are all rail, or what we call fast freight. It is not very fast, though. (Laughter.)

Mr. HOLDEN: That always produces a smile in a case of this kind. You say most of the time you ship by all rail?

Mr. BYRNE: From New York.

Mr. HOLDEN: Some of the time you ship otherwise?

1512 Mr. BYRNE: When we can spare the time; yes, sir.

Mr. HOLDEN: How are those shipments made?

Mr. BYRNE: It might be made by some differential line which is usually a water route.

Mr. HOLDEN: What do you mean by differential line in a case of this kind?

Mr. BYRNE: I am not sure that I can exactly answer that correctly, but what I have always understood by differential lines, was those lines from points on the coast that probably are allowed a differential against the all rail lines on account of water, or for some other inconvenience or disabilities.

Mr. HOLDEN: You mean a route part of which is via water?

Mr. BYRNE: I am not sure that that is a perfect answer to your question or not.

Mr. HOLDEN: I am simply groping around the way you are; I am not sure either.

Commissioner CLARK: You mean a route by which the lower freight rate applies?

1513 Mr. BYRNE: Yes, sir. I think the first class freight we have had a differential on from some coast point of 10 cents first class. I think seven or five on second or third, too.

Mr. HOLDEN: Can you tell what some of those differential rates are, and how they are made up?

Mr. BYRNE: That is a question of geography I could not undertake to answer.

Mr. HOLDEN: Do some of your goods come by the lakes at times?

Mr. BYRNE: We job a few goods in the summer by the lakes, lake and rail.

Mr. HOLDEN: They go to what point, Chicago or Duluth or where?

Mr. BYRNE: They go to Chicago, I think.

Mr. HOLDEN: Put on the boat at what eastern point?

Mr. BYRNE: I presume Buffalo.

Mr. HOLDEN: In the summer time you job that way at times?

Mr. BYRNE: We ship some goods that way; yes, sir. The saving is so small, and the delay so great, we seldom use those lines unless very early in the spring when we buy and pay for goods for the purpose of making a little small saving in the freight.

1514 Mr. HOLDEN: How are your goods shipped as to carloads or less than carloads—both, I suppose, to some extent?

Mr. BYRNE: We have a great many carloads of freight, but we do not get any consideration for that.

Mr. HOLDEN: We are not talking about that at this particular juncture of the case. I am asking about the proportion of your goods which come carloads and that which comes less than carload?

Mr. BYRNE: I think our tonnage per annum is something like six million pounds; that is of a business amounting to a little over two and a half million dollars.

Mr. HOLDEN: Then by that I understand it is all practically less than carload shipments?

Mr. BYRNE: No, sir; not at all.

Mr. HOLDEN: I am waiting for you to answer my question.

Mr. BYRNE: We make a great many shipments that exceed one carload, and many times have three or four or five carloads of freight in a day.

Mr. HOLDEN: Do you mean it started from its point or origin by the carload, or do you mean by the gross amount of tons you get in a day?

Mr. BYRNE: Many shipments are in carloads from point
1515 of origin. I assume, however, that when we have congestion of freight, and get two or three, or four or five or six carloads, that they have been made up at Chicago. Most of our freight I understand is unloaded and reloaded at Chicago.

Mr. HOLDEN: You cannot tell us what percentage would be straight carloads and what percentage comes in to your house at Omaha in less than carloads?

Mr. BYRNE: You mean through Chicago or point of origin?

Mr. HOLDEN: Take it from the point of origin first?

Mr. BYRNE: I could not answer that question very well, but we seldom have broken car lots, because our freight is switched to our back door.

Mr. LYNDE: What is the territory that you claim as exclusively Omaha territory, or is there any such?

Mr. BYRNE: Well, sir; I would not know how to describe that. That is a trade name for territory that is regulated by different lines of merchandise.

Mr. LYNDE: You are in your own business. Confine it to your own business. What is your exclusive territory?

Mr. BYRNE: I think I can answer that.

1516 Mr. LYNDE: Well, please do so.

Mr. BYRNE: We should be entitled—

Mr. LYNDE (interrupting): Not what you are entitled to. I

want to know what you have really got. I don't care what you are entitled to in that respect.

Mr. BYRNE: You want to know what the Omaha territory is?

Mr. HOLDEN: Yes, as you are now doing your business today.

Mr. BYRNE: Well, we sell goods all the way from Omaha to the coast.

Mr. LYNDE: I said exclusive territory in my question.

Mr. BYRNE: I don't think I would claim exclusive territory?

Mr. LYNDE: As to any of it?

Mr. BYRNE: As to any of it, knowing what I do about selling merchandise.

Mr. LYNDE: In this territory to the coast, does Omaha stand on the same basis as Kansas City and St. Joseph?

Mr. BYRNE: Please ask that question again?

Mr. LYNDE: As to this territory west of the Missouri River, 1517 which extends to the coast, which you have described as including Idaho, Montana, Washington, Oregon and Wyoming, do I understand that the Omaha, St. Joseph and Kansas City houses stand on the same basis?

Mr. BYRNE: I would have to consult the tariff sheets before I could answer that question.

Mr. LYNDE: Do they sell in the same territory?

Mr. BYRNE: We meet Kansas City and St. Joseph in nearly all the territory we cover.

Mr. LYNDE: Now, as a matter of fact, do they not have the same rates that you have from Omaha into that territory? Don't you know what the fact is with reference to that?

Mr. BYRNE: I will have to repeat my former answer. I could not answer that without referring to the tariff sheets.

Mr. LYNDE: I am not asking you as to the precise rate. Do they have the same? Do you know whether or not they have?

Mr. BYRNE: My impression is—

Mr. LYNDE: As a matter of fact, is it not true that you at Omaha have a lower basis of rates into that territory than Kansas 1518 City or St. Joe have? Isn't that true?

Mr. BYRNE: In what territory do you mean?

Mr. LYNDE: I have already stated it to you twice—Pacific Coast territory?

Mr. BYRNE: What part of the Pacific Coast?

Mr. LYNDE: Washington and Oregon. Those are the points you named yourself?

Mr. BYRNE: You want to know whether Kansas City and St. Joe have the same rate that we have?

Mr. LYNDE: I did not say the same. I ask you if you did not have a lower basis of rates?

Mr. BYRNE: I could not answer that absolutely without consulting the tariff sheets.

Mr. LYNDE: Now take it southwest, the territory southwest of Kansas City, do you have the same basis of rates into that territory that Kansas City has?

Mr. BYRNE: I do not think we do, sir.

Mr. LYNDE: It is a fact you do not, is it not?

Mr. BYRNE: You say is it a fact we do not?

Mr. LYNDE: You say you did not think so, but why not say you do not have?

Mr. BYRNE: I cannot answer the question absolutely without the figures.

Mr. LYNDE: I am not asking for the figures. Is it not a fact that the rates are higher for you? Is there not a differential in other words between Omaha and Kansas City on shipments into that territory?

Mr. BYRNE: I could only give my impression of that. I would not want that to go into the record.

Mr. LYNDE: I will take your impression for the present.

Mr. BYRNE: To what point, for instance?

Mr. LYNDE: I don't care. You may select your own point. I am describing these Oklahoma, Texas and Arizona and similar points.

Mr. BYRNE: I think locally Kansas City enjoys better rates there than we do.

Mr. LYNDE: Well, it does. I should say they do—isn't that true? And isn't the reverse true as to this northwest territory about which we were talking?

Mr. BYRNE: From Kansas City and St. Joseph?

Mr. LYNDE: Yes.

Mr. BYRNE: I will have to give the same answer. I would not want to answer those questions without seeing the tariff.

1520 Mr. LYNDE: You know as to the basis of rates between your St. Paul competitors and yourself in what you call—

Mr. BYRNE: Only in a general way. I was compelled to answer Mr. Holden's question the same way I am answering you.

Mr. LYNDE: That is all I care to ask this witness.

Redirect examination:

Mr. WEBSTER: May I ask one more question to make clear an answer, if I can? You were cross examined as to your incoming freight, whether much of it was in carloads. You gave answer as to the extent of the tonnage, many times occupying many cars. Do you mean by that your incoming freight was shipped at carload rates or not, or did you pay on that freight simply the rate per class per hundred pounds?

Mr. BYRNE: There are no carload rates on dry goods of any description.

1521 Commissioner CLARK: My. Byrne, I understand that you job in Des Moines in competition with St. Paul—

Mr. BYRNE (Interrupting): Mr. Commissioner, before I answer that question I want to make one exception. I think there is a commodity rate on cotton bates but I am not sure but what there is on oil cloth too. A carload rate exists on those items which are rather unimportant. Pardon me for the interruption, Mr. Commissioner.

Commissioner CLARK: You come in competition at Des Moines with jobbers from St. Paul and Chicago?

Mr. BYRNE: Yes, sir.

Commissioner CLARK: What is the first class rate from the seaboard to Chicago?

Mr. BYRNE: I think Mr. Webster stated it was 75 cents.

Commissioner CLARK: Do you know what the rate is from Chicago to Des Moines?

Mr. BYRNE: It is 87 cents, plus the rate from the Mississippi River to Des Moines, which I could not give you at this time. There is a mileage rate in the State of Iowa which regulates that. I think it is probably half the rate between the two rivers.

Commissioner CLARK: You do not know what the rate to Des Moines is from the seaboard, made up on the Chicago or St. Louis combination?

Mr. BYRNE: No, sir; I could not answer that without looking at the tariff.

Commissioner CLARK: Your rate from the seaboard to Omaha is \$1.47, you say?

Mr. BYRNE: \$1.47; yes, sir.

Commissioner CLARK: Now what is your rate from Omaha to Des Moines?

Mr. BYRNE: That I could not answer either.

Commissioner CLARK: You do not know the rate then which the St. Paul jobber has to contend with in order to meet your competition in Des Moines?

Mr. BYRNE: I would not undertake to answer from memory, Mr. Commissioner.

Mr. PEIRCE: I want to reserve the right to ask this witness one or two questions after luncheon. I am not sure yet that I shall want to.

Commissioner CLARK: You may do that, of course.

(Witness excused.)

1523 ARTHUR C. SMITH, called as a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination:

Mr. WEBSTER: State your name?

Mr. SMITH: Arthur C. Smith.

Mr. WEBSTER: Your place of residence?

Mr. SMITH: Omaha, Nebraska.

Mr. WEBSTER: The name of your company?

Mr. SMITH: M. E. Smith & Company, a Nebraska corporation.

Mr. WEBSTER: Dry goods?

Mr. SMITH: Yes.

Mr. WEBSTER: How long have you been in the business?

Mr. SMITH: A little over 20 years.

Commissioner HARLAN: At Omaha?

Mr. SMITH: Yes, sir.

Mr. WEBSTER: You may state in a general way without taking

very much time, the territory through which you do business in which you meet with discrimination, if any in the northwest, 1524 in favor of St. Paul and Minneapolis, on account of freight rates?

Mr. SMITH: As I understand it, going towards St. Paul and Minneapolis, the basis on which the lines break is about Sioux City, and of course Sioux City is very much nearer Omaha than to St. Paul and Minneapolis, as a local proposition. Then in addition to that we have on first class goods the embargo of 32 cents to overcome as well. In other words, it would allow them to go 32 cents—to acquire the same profit on their goods even on the breaking point, and they break on a distance basis, much more favorable in most instances to St. Paul and Minneapolis. In regard to rates from the northwest, I understand to Montana common points, Billings, Butte and Helena and points like Spokane, the rates are the same. At the same time there is this—

Mr. WEBSTER (interrupting): Rates from where?

Mr. SMITH: From Omaha to those points, and from St. Paul and Minneapolis to those points, but there is still that 32 cents a hundred and a corresponding amount to other California points against us, a corresponding amount on other classes in favor of them, and against us.

Mr. WEBSTER: What is that 32 cents you speak of?

1525 Mr. SMITH: The rate from the Atlantic tidewater to St. Paul is \$1.15 and to Omaha is \$1.47. The difference is 32 cents. There are a lot of little points that are not classes as common points, to which the rates are very much less from St. Paul and Minneapolis—unimportant points—than from Omaha in this northwest territory.

Mr. WEBSTER: You may state what area of territory as nearly as you can, surrounding Omaha, St. Joseph and Kansas City, that covers?

Mr. SMITH: You mean in which we have met with that discrimination?

Mr. WEBSTER: Yes.

Mr. SMITH: We have a map there that shows the towns and the comparative distances.

Mr. WEBSTER: I simply want it as a business man in the actual business to have you state the territory through which you meet with this discrimination in your business. In other words, where does the territory through which you actually sell goods extend in which you come in contact with this competition?

Mr. SMITH: We sell goods a little ways east of Des Moines 1526 and we cover southwestern Iowa, northwestern Iowa, the southern part of Minnesota; South Dakota pretty thoroughly; Nebraska; the northern half of Kansas pretty thoroughly, and the northwest corner of Missouri, and then of course we have a large business in Wyoming, Idaho, Utah, Colorado and Washington, Oregon, California, and some business in Montana.

Mr. WEBSTER: Mr. Smith, can you state about what proportion of the gross expense of conducting your business is made up of freight charges?

Mr. SMITH: That is a question of percentage. It varies. In other words, the price of goods now is quite high.

Mr. WEBSTER: What is the average?

Mr. SMITH: At the present time I should say approximately three to three and one-fourth per cent.

Mr. WEBSTER: You are not answering my question surely. I am asking what proportion of your gross expense account—

Mr. SMITH: Oh, excuse me; I thought you asked what percentage the freight cost was. I should say it was between 20 and 25 per cent.

Mr. WEBSTER: And your freight charges are about what 1527 per cent of your gross purchases?

Mr. SMITH: Well, it varies. I should say at the present time about three or three and one-fourth per cent. If goods were much lower that percentage of cost would be higher.

Mr. WEBSTER: Another thing, Mr. Smith: What is the fact as to whether or not there is any hazard to the railway companies in the transporting of goods which you handle or whether or not you have had claims against railway companies for loss and damage to goods in transit?

Mr. SMITH: I think that is a comparatively trifling amount—the percentage I think is very small.

Mr. WEBSTER: Another thing: What is the fact—do you know whether or not there has been any decrease in freight charges on the kind of goods you handled in the last seventeen years?

Mr. SMITH: No, sir; I think not. I think they have been advanced a little.

Mr. WEBSTER: What is the fact as to whether or not during that same period of time there has been an increase in the amount of tonnage carried, and likewise an increase in the number of railway companies engaged as competitors for the business?

1528 Mr. SMITH: Of course the tonnage has increased very materially. I presume there is probably 10 or 15 times the business done that was done 15 or 20 years ago.

Mr. WEBSTER: The other part of my question as to whether or not there has been an increase in the number of railways?

Mr. SMITH: I think in the period you mention, there have at least been two railway lines come into Omaha, the Illinois Central and Chicago Great Western. The Milwaukee & St. Paul came in, I think, about 23 or 24 years ago.

Mr. WEBSTER: That is all I care to ask, unless you have something in your mind you care to state. If you have you may state it.

Mr. SMITH: No, I think I have stated everything I care to.

Cross-examination:

Mr. HOLDEN: You say, Mr. Smith, 20 to 25 per cent of your total expense if freight charges

1529 Mr. SMITH: Yes, sir; I think so.

Mr. HOLDEN: What do you figure in your freight charges in making up your percentage?

Mr. SMITH: The expense bill.

Mr. HOLDEN: Do you figure the cost of getting the goods into your house?

Mr. SMITH: No, the item of drayage is not included.

Mr. HOLDEN: Is not included?

Mr. SMITH: No, sir.

Mr. HOLDEN: You want it understood this represents simply the railroad freight charges?

Mr. SMITH: Yes, sir.

Mr. HOLDEN: You say 10 or 15 times the amount of business according to your judgment is done now that more than was done how long ago?

Mr. SMITH: Understand I am not speaking of that in reference to all lines, Mr. Holden. I am speaking in the dry goods lines.

Mr. HOLDEN: Your figures are not based on any railroad statistics?

Mr. SMITH: Oh, goodness, no. I am speaking just from my personal experience.

1530 Mr. HOLDEN: You mean people handle 10 or 15 times as much business now as you did at your earlier period which you have mentioned?

Mr. SMITH: I would say in 20 years since I have been there, we have probably increased our business certainly 10 times, or a little more than that.

Commissioner CLARK: I understood you to say, Mr. Smith, that the rates to points in Montana, Washington, Idaho and so forth, are the same from Omaha as from St. Paul?

Mr. SMITH: To the common points, I think; yes, sir; I think that is true.

Commissioner CLARK: What is the case in regard to points in Kansas, Nebraska and Oklahoma? Are the rates the same from St. Paul that they are from Kansas City and Omaha, or are they higher into Nebraska, Kansas and Oklahoma?

Mr. SMITH: Oh, they must be higher, I think.

Commissioner CLARK: Higher from St. Paul.

Mr. SMITH: Yes, sir. Of course they can go further into this distant territory by reason of their—

Commissioner CLARK: It is obvious that favorable rates permit anybody to go further with their business. What I want to
1531 get at is whether or not St. Paul has the same rates to the territory immediately west and southwest of these Missouri River points, that these Missouri River points have?

Mr. SMITH: When you get west a certain distance, it may be true, but I do not think in Kansas and Nebraska it is true.

Commissioner CLARK: We will take a recess now until two o'clock.

(The Commission thereupon, at 12.30 P. M. took a recess until 2.00 o'clock P. M.)

1532

KANSAS CITY, MISSOURI, November 21, 1907.

At 2:00 o'clock P. M. the Commission met pursuant to the recess taken this morning, the parties all appearing as this morning, and the hearing proceeded as follows:

ARTHUR C. SMITH, a witness on behalf of the complainants, having been previously sworn, was recalled and testified further as follows:

Cross-examination (Continued):

Mr. LYNDE: You were asked as to the points where the rates broke as between Omaha and St. Paul. You mentioned, if I understood correctly, at or near Sioux City?

Mr. SMITH: Yes, I made that statement. I said I thought so.

Mr. LYNDE: As a matter of fact, Sioux City takes the Omaha rate, doesn't it, from Chicago or from the seaboard?

Mr. SMITH: Oh, yes; certainly.

Mr. LYNDE: So that so far as that territory is concerned, 1533 Sioux City stands on exactly the same basis as Omaha?

Mr. SMITH: I was not making any contention about that.

Mr. LYNDE: I know, but I want that to appear that that is the fact. That is the fact, is it not?

Mr. SMITH: Yes, sir.

Mr. LYNDE: You were speaking about the competitive territory with St. Paul, and you mentioned for instance, that you sold to points east of Des Moines?

Mr. SMITH: Not far east, no.

Mr. LYNDE: Of course whatever you sell in that territory coming from the east from the seaboard, moves in the first place to Omaha, and then you ship it back to the point where you make your sale east of Des Moines?

Mr. SMITH: Yes, sir.

Mr. LYNDE: In that territory is not Chicago a competitor with you?

Mr. SMITH: Certainly.

Mr. LYNDE: And Chicago ships direct on the direct line at a much lower rate to this territory than the rate from Chicago to Omaha originally, doesn't it?

1534 Mr. SMITH: I do not know what the rates from Omaha to Des Moines are, or from Chicago to Des Moines.

Mr. LYNDE: You say you do not know?

Mr. SMITH: No, I do not.

Mr. LYNDE: You do not know as a matter of fact that there is a difference in the first class rates of 12 cents—that is, the rate from Chicago to that territory is 12 cents less than the rate from Chicago to Omaha?

Mr. SMITH: Yes, I should think it would be that much, but I do not know.

Mr. LYNDE: Well, the same condition is true from St. Louis up into that territory too. They can ship directly up there without any back shipments. The movement is on a direct line, is it not?

Mr. SMITH: Yes, I should think so.

Mr. LYNDE: So your competition in that territory is not with St. Paul, is it?

Mr. SMITH: St. Paul comes into that territory a great deal.

Mr. LYNDE: Now as a matter of fact, doesn't Chicago and St. Louis control that territory and for that matter is not Des Moines itself a large jobbing centre?

1535 Mr. SMITH: It is a common competitive territory. In our business I do not think they have any large wholesale house in Des Moines. They may have in groceries but not any wholesale dry goods house.

Mr. LYNDE: When you come into the southwestern Iowa territory, the same thing is true from St. Louis, is it not? They ship directly into that territory, where as you have to ship to Omaha and then back to get to it?

Mr. SMITH: Yes, sir; that is true.

Mr. LYNDE: Isn't the rate from St. Louis to that territory a lower rate than the rate to Omaha in the first instance?

Mr. SMITH: I could not answer that.

Mr. LYNDE: You mentioned also southern Iowa. The same condition would be true of southern Iowa as is true of southwestern Iowa, in that regard, wouldn't it?

Mr. SMITH: Probably more so.

Mr. LYNDE: It is nearer to St. Louis and also nearer Chicago?

Mr. SMITH: Yes, sir.

Mr. LYNDE: And both of those territories are further away from St. Paul?

1536 Mr. SMITH: That is true, but at the same time St. Paul cannot carry southern Iowa, but anywhere from Des Moines north they can, and they are very thoroughly represented there with lines of goods and cover the territory. They have men that live in those towns?

Mr. LYNDE: You mentioned California as a competitive territory. Do you sell out in California?

Mr. SMITH: Yes, sir.

Mr. LYNDE: You meet there competition from San Francisco?

Mr. SMITH: Yes, sir; from everywhere.

Mr. LYNDE: And everywhere?

Mr. SMITH: Yes, sir.

Mr. LYNDE: All the transcontinental lines of course reach California practically from all the shipping points?

Mr. SMITH: Yes, sir.

Mr. LYNDE: Besides that there is the water competition?

Mr. SMITH: Yes, sir; I think so.

Mr. LYNDE: That is true of Washington and Oregon, is it not?

Mr. SMITH: Well, there don't all the transcontinental lines reach there, but I think some of them do.

1537 Mr. LYNDE: But you have the direct water competition in that territory as well?

Mr. SMITH: There is water competition on the coast; yes, sir.

Mr. Commissioner, I would like to make one statement, if you please.

Commissioner CLARK: Yes, sir.

Mr. SMITH: I think you asked if the rates were not lower from Omaha to Kansas points and Oklahoma points than from St. Paul and Minneapolis, and I told you I felt sure they were. Of course I do not know what the rates are. I would like to state, that while that is true, at the same time you take rates at Minnesota and the Dakotas and they are much less than they are from Omaha, each having an advantage in their own sphere. I thought I would like to bring that out.

Mr. LYNDE: Less in what way?

Mr. SMITH: Commissioner Clark asked if the rates were not less from Omaha to Kansas and Oklahoma, than from St. Paul to Kansas and Oklahoma, and I told him that I thought they were. I did not know the exact rates, but I felt sure they were. Then I wished to bring out that the rates in Minnesota and North Dakota 1538 were less from St. Paul and Minneapolis into those points were less than they were from the Missouri River.

Mr. LYNDE: I did not understand you. I thought you meant to bring out the rate from Minnesota and South Dakota points were less into this Kansas and Oklahoma territory than into Kansas City?

Mr. SMITH: No, I mean the northern rate.

Commissioner CLARK: What in your judgment and in your view would be the effect of granting the prayer of your complainants in this matter? How could it affect your business?

Mr. SMITH: I- would save us a lot of money.

Commissioner CLARK: Is that the only effect it would have on your business?

Mr. SMITH: We could probably go further into territory that we cannot now reach.

Commissioner CLARK: That is, if the prayer for a reduction in these rates to the Missouri River cities was granted, you would be able to extend your business further into this competitive territory, and take business that you cannot now get from other jobbing centers.

Mr. SMITH: Of course, we would always have to follow 1539 the lines of the railroads. In other words, there might be territory where there would be no direct lines that we might not reach, but wherever there is a direct line, yes.

Commissioner CLARK: Of course it must necessarily be along the available lines of the roads?

Mr. SMITH: Yes, sir.

Mr. LYNDE: What other territory? Let us see what you have in mind there. What other territory to you think you would be able to reach?

Mr. SMITH: We could go probably further north than we go now. We could go probably further south than we go now.

Mr. LYNDE: How would it affect your going south?

Mr. SMITH: Well, it is this way: If you please, there is certain territory you go into and try to sell staple goods now. All there is about it, they will say, "My rate from St. Louis is less than from

your place by so much. You make me up so much of the freight, if you choose, either in actual cents per hundred pounds, or in an equivalent in cost, and we will buy these goods of you. If
1540 not, we will beat you out, if you please, through St. Louis."

Mr. LYNDE: Isn't that the position, that if you can get a lower rate into Omaha and the St. Louis and Chicago rates remain on the same basis, then you can go into this southern and southwestern territory as against Chicago and St. Louis, and extend further? Isn't that what you mean?

Mr. SMITH: Please state that again.

Mr. LYNDE: Putting it again, if you can get a lower rate to Omaha, and St. Louis and Chicago cannot, their rates remaining unchanged, the reduction being solely in the Omaha rate, then you can extend your competition more successfully against St. Louis and Chicago in this southwestern territory? That is what you mean, is it not? You do not fear St. Paul competition in the southwestern territory?

Mr. SMITH: No, certainly not.

Mr. LYNDE: Your competition there is from St. Louis and Chicago?

Mr. SMITH: More particularly, yes.

Mr. LYNDE: So that what you want in that territory as against St. Louis and Chicago, is to have your rate reduced, and
1541 have the Chicago and St. Louis rates remain as they are?

Mr. SMITH: We are not making any complaints of the Chicago and St. Louis rates, but we are making complaint that the basis is altogether too high and unjustifiable for the short haul of from 200 to 300 miles across the States of Iowa and Missouri.

Mr. LYNDE: There is nothing of that sort mentioned in your complaint. I am assuming that you stated what you had in mind in your complaint filed with the Commission and in that you complain of the adjustment of rates as compared with St. Paul. The question I am trying to get at is this: If Chicago and St. Louis rates are reduced in the same proportion that the Omaha rates are, as asked by you, relatively you will stand exactly in the same position in the southwestern territory, will you not?

Mr. SMITH: Yes, if they are reduced, but there is no reason why they should be.

Mr. LYNDE: Why not?

Mr. SMITH: Because they are on a lower basis and this other is on a very high basis. You people have always talked about the increase in tonnage decreasing the cost. There has been a
1542 tremendous increase in tonnage, and no decrease in cost.

Mr. LYNDE: Do you think St. Louis and Chicago, who are competing with you in this Iowa territory and Missouri territory, and in this southwestern territory, are going to be satisfied to have you extend your competition and reach into further territory as against them, because you can get a reduction in your rate?

Mr. SMITH: Any rate we get from the east they would get corresponding advantage of.

Mr. LYNDE: You mean there would be the same reduction to them?

Mr. SMITH: They have a customer, if you please, and the rates are based on Missouri River on most of these points, and if the rates were reduced the customers to whom they sell would get that corresponding reduction.

Mr. LYNDE: When the reduction is relatively the same to St. Louis, Chicago and Omaha, if you please, you spend exactly the same afterwards as you did before, don't you so far as that competition is concerned?

Mr. SMITH: If they will reduce the same amount, certainly.

1543 Mr. LYNDE: Do you think Chicago and St. Louis are going to be satisfied—

Mr. SMITH (interrupting): I am not arguing their case. They can argue their own case.

Mr. LYNDE: That is the question I am asking you.

Mr. SMITH: I would rather they would answer that question. (Witness excused.)

1544 E. J. McVANN, called as a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination:

Mr. WEBSTER: State your name?

Mr. McVANN: E. J. McVann.

Mr. WEBSTER: Where do you live?

Mr. McVANN: At Omaha.

Mr. WEBSTER: What is your present occupation?

Mr. McVANN: I am secretary of the Omaha Grain Exchange.

Mr. WEBSTER: You may state what experience you have had as a freight man in connection with any of the railroads?

Mr. McVANN: I began in 1885 with the old B. C. R. & N. Railway as clerk in their general freight office. I went from there to the Pennsylvania office in 1867, as their agent at Lincoln, Nebraska. I remained with that company for about 15 years at Lincoln and Omaha, Nebraska, Sioux City, Iowa, and Dubuque, Iowa. Since leaving their employ about five years ago, I have been employed by the Sioux City Commercial Club and the Omaha

1545 Commercial Club, and the Omaha Grain Exchange, as Commissioner and Secretary in charge of their freight rate matters.

Mr. WEBSTER: Then as a clerk in freight matters, the question of freight rates has been a constant subject of your study and attention during all these years?

Mr. McVANN: Yes, sir; since the very beginning of my experience.

Mr. WEBSTER: Let me ask you, Mr. McVann, whether you have made any special investigation with reference to the questions involved in this present litigation?

Mr. McVANN: Yes, sir; I have.

Mr. WEBSTER: At whose request?

Mr. McVANN: At your request.

Mr. WEBSTER: In making that investigation, let me ask you particularly whether you took occasion to examine the reports of the railway companies made during the last year, and filed with the Interstate Commerce Commission?

Mr. McVANN: The annual reports, you mean?

Mr. WEBSTER: Yes, sir.

Mr. McVANN: Yes, sir; I did.

Mr. WEBSTER: And with reference to this case, did you make any special examination of the tariff sheets?

1546 Mr. McVANN: Yes, sir; I did.

Mr. WEBSTER: To that end did you examine the records and files in the offices of the Interstate Commerce Commission at Washington at all?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: Are you familiar in a general way with the rate from the Atlantic seaboard to St. Paul and Minneapolis?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: You may state what those rates are, if you can from memory, or I will give you something you want. You may look at tariff sheet No. 209. This may not be disputed under the issues of the case, but as the foundation for something else I want that stated.

Commissioner CLARK: State what that is you are reading from.

Mr. McVANN: I am reading from joint freight tariff W. T. L. No. 289, which bears the designation of W. T. L. I. C. C. No. 699, issued by the Trunk Line Committee, effective April 28, 1903.

Mr. WEBSTER: In that connection you may refer to the other paper in your hand?

1547 Mr. McVANN: This is W. T. L. I. C. C. No. 699, as an amendment No. 6, cancelling amendment No. 5, and including all current changes effective July 8, 1907. Shall I answer your question now?

Mr. WEBSTER: Yes, you may read into the record the St. Paul rate.

Mr. McVANN: You desire both the standard all rail class rate and the others as well?

Mr. WEBSTER: Give me the standard all rail class rates first.

Commissioner CLARK: The first five classes.

Mr. McVANN: The first five classes are first class \$1.15, second class, 99 cents, third class 76 cents, fourth class 53 cents, and fifth class 46 cents. Those are the rates from Boston, New York, Portland and Providence by the standard all rail lines to St. Paul, Minneapolis, Duluth, and Superior.

Mr. WEBSTER: In a general way, without at this time going back into details, do you know for about how many years that rate or substantially that rate has been in force?

1548 Mr. McVANN: Since 1901, if I remember correctly—sometime in January I think it was made effective.

Mr. WEBSTER: State whether that rate which you have read ap-

plies to goods shipped from the Atlantic seaboard and consigned to points or shippers in the cities of St. Paul and Minneapolis?

Mr. McVANN: These rates apply on business moving over the rails of the standard lines from New York to St. Paul and Minneapolis.

Mr. WEBSTER: Can you tell from that sheet whether or not that same rate applies to goods consigned through Missouri River crossings?

Mr. McVANN: It does in certain specific cases that are noted.

Mr. WEBSTER: What do you understand by Missouri River crossings referred to in that tariff sheet?

Mr. McVANN: Generally speaking, Omaha to Kansas City—the cities on the Missouri River, Omaha to Kansas City, where the various lines of railway extending west of the Missouri River cross the Missouri River.

Mr. HOLDEN: Do you mean the \$1.15 rate applies at Missouri River crossings?

1549 Mr. McVANN: I said it applies to the Missouri River crossings in certain specific cases.

Mr. HOLDEN: And Omaha is one of these?

Mr. McVANN: I should assume Omaha is one of these crossings; yes, sir, I know that to be a fact.

Mr. WEBSTER: In your application of these rates to the Missouri River crossings, does it apply to goods which are consigned to the Missouri River crossing points, to wit, Omaha, Kansas City, and St. Joseph or either of them?

Mr. McVANN: Locally?

Mr. WEBSTER: Yes, sir.

Mr. McVANN: No, sir.

Mr. WEBSTER: It does not.

Mr. McVANN: No, sir.

Mr. WEBSTER: Then to what shipments or consignments does that rate apply which by route go through the Missouri River crossings such as Omaha or Kansas City, or St. Louis?

Mr. McVANN: On the second page of the tariff there is a note to the effect that the rates named herein applying from Atlantic seaboard points, and points west thereof to St. Paul and so forth,

1550 naming the various points, may also be added to the rates in effect from the Missouri River crossings to make through rates to Montana common points, Spokane, Washington and common points, and so forth, on traffic routed via Chicago and various points known as Chicago junction points, to Peoria, East St. Louis and St. Louis.

Mr. WEBSTER: Then on goods consigned to the points named in the paragraph you have just read, the rate would be \$1.15 to the Missouri River, and then added thereto the rate from the Missouri River to the point of destination?

Mr. McVANN: In that prescribed territory.

Mr. WEBSTER: Does that rate apply to shipments which are consigned to or stopped at the Missouri River crossings, Omaha, St. Joseph or Kansas City?

Mr. McVANN: No, sir; it does not.

Mr. WEBSTER: Does it apply to goods which are consigned to and stop at Minneapolis or St. Paul?

Mr. McVANN: The rates which I just read do apply to Minneapolis and St. Paul direct on business consigned locally to those points.

1551 Mr. WEBSTER: Then if the jobbers at Omaha, St. Joe or

Kansas City desire to reach the territory mentioned on a shipment going to Montana common points or Spokane common points, they pay the freight from the Atlantic seaboard to Omaha, St. Joseph and Kansas City?

Mr. McVANN: Yes, sir; on what is known as the \$1.47 scale.

Mr. WEBSTER: Then he adds thereto to get to Montana common points and Spokane common points what?

Mr. McVANN: The current tariff rate from the Missouri River to Montana common points, or the other points mentioned.

Mr. WEBSTER: Wherein and whereby are the jobbers of Omaha, St. Joseph and Kansas City, deprived of the advantage of that \$1.15 rate, or can they enjoy it under any circumstances according to that tariff?

Mr. McVANN: No, sir; they cannot, except in the remote contingency that they might buy some goods in New York or Boston or New England, and order those goods shipped directly to Montana common points through Omaha. They would have no right to stop them in Omaha, Kansas City or St. Joe under those conditions.

1552 Mr. WEBSTER: That gives the Minneapolis and St. Paul jobbers what advantage over the jobber at Omaha and Kansas City?

Mr. McVANN: To the points known as Montana common points, which are certain specified points in Montana, among which are Butte and Helena, the combination of rates on St. Paul would be \$1.15 scale into St. Paul plus the local rate from St. Paul to Helena or Butte. The Omaha combination would be \$1.47 to Omaha plus the local rate from Omaha or Kansas City to Helena, which is the same as the St. Paul and Minneapolis rate to Helena. The difference against the Omaha or Kansas City or St. Joseph scale and the \$1.47 scale, or a disadvantage of 32 cents on first class.

Mr. WEBSTER: Per 100 pounds?

Mr. McVANN: Yes, sir; per 100 pounds.

Mr. WEBSTER: Now, Mr. McVann, have you taken the trouble to prepare a statement based on that tariff sheet as to the rates and the advantages in favor of St. Paul and Minneapolis, against the Missouri River towns, a copy of which I hand you for examination.

1553 Mr. McVANN: Yes, sir; I prepared some data on that.

Mr. WEBSTER: I ask you to state whether that paper which I exhibit to you is a correct statement?

Mr. McVANN: It is a correct statement in the main facts.

Mr. WEBSTER: Is that which I now show you the original type-written impression of those tables or computations which you prepared?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: That is correct, according to your best judgment?

Mr. McVANN: I think it is. As to the figures and facts there stated, with regard to the application of that tariff and those rates, it is.

Mr. WEBSTER: We desire to offer that table in evidence.

Mr. HOLDEN: The first two pages I assume under the witness's testimony are mere reproductions of figures and statements in the tariff. The third page seems to be what the witness seems to call three manifest results from those figures, being nothing but an argument and statement of conclusions. It seems to me the witness being here on the witness stand, it would be more proper for the testimony to go in orally, and matters of argument be reserved for a later time. It is not very material perhaps, but I do not think it is quite proper to inject a brief and argument into the case at this time.

Mr. WEBSTER: It is a statement of conclusions in one sense, but based on the tables which will take less time than for me to go over and ask all the questions which might be necessary to bring out what is there very briefly stated.

Commissioner CLARK: It would appear that the entire matter is simply a declaration of what he has shown appears in the tariff; that is, that certain rates apply and certain rates must be paid to reach certain territory, with the exception of the so-called manifest results in which the witness assumes to say that the rates manifestly are compensatory to the carriers, which clearly is a matter of opinion on his part. Aside from that paragraph I do not see anything in it that has not already been stated in substance by the witness. We will let the exhibit go in for what it is worth.

Mr. HOLDEN: We desire to recall Mr. McVann for the purpose of examination with reference to this exhibit, at a later time after we have had an opportunity to examine it.

1555 Commissioner CLARK: Certainly you may do that.

Said table was marked as Complainant's Exhibit No. 1, and is herewith transmitted as such.

Mr. WEBSTER: Mr. McVann, have you prepared a map of the northwestern territory from St. Paul west to the western line of the State of Washington and Oregon, including a table showing the tariff rates from New York to said territory when routed through St. Paul and Minneapolis on the one hand, and when routed through Omaha upon the others?

Mr. McVANN: Yes, sir; I have.

Mr. WEBSTER: I show you a map and ask you if that is the one you prepared?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: What do you say as to the correctness of the tables which are set down on that map?

Mr. McVANN: They are substantially correct from the best sources of information that I could obtain. If there is any error it is an error of which I am not conscious. There may be some unconscious errors.

Mr. WEBSTER: I offer in evidence a blue print of that 1556 map, a copy of which has been presented to the defendants' counsel, and a copy of which is upon the table before the Commissioners.

Said blue print map was marked as Complainants' Exhibit No. 2, and is transmitted herewith.

Mr. HOLDEN: In connection with this matter, I want to make not what I care to characterize as an objection, but this complaint charges that the difference between the rates from the seaport to St. Paul and to the Missouri River cities is an unjust adjustment. Now in so far as these comparisons bear on this controversy, there is perhaps no objection to them, as for instance where the witness testified the westbound rates from St. Paul and Omaha are the same as to the Helena, Butte and Montana common points, and it is very clear as the witness testified, that we get back every time to the difference between the seaboard to St. Paul and the seaboard to Omaha, or the 32 cent proposition. They have shown a lot of comparisons here where they show the rate for instance is \$4.25 to Missoula and via St. Paul is \$3.51. Then against Omaha it is different. That necessarily involves the reasonableness of 1557 westbound rates west of Omaha and St. Paul in which this complaint is not concerned. Missoula is a minor point and is not a point of any importance. How that 69 cents is made up is a matter not of interest here. We are in danger, by allowing a comparison of this kind to go into evidence, of trying a set of rates not complained of here. We have no case to defend, as we understand, and no preparation made to defend the rates west of Omaha or St. Paul. I do not think the rates out to these points or comparisons to these points are pertinent in any sense whatever. The Northern Pacific is not a party here.

Commissioner CLARK: I understand the complainants offer this in support of their contention that the rates to the Missouri River crossings named are unjust in comparison with the rates to the twin cities, and I have no hesitancy in saying that the Commission will take judicial notice of the difference between competitive points and non-competitive points, which is a well known fact that permeates the business of the country as tending to show that competition is controlling.

Mr. HOLDEN: The 69 difference which they show in this particular comparison to Missoula does not grow out of any matters in 1558 the complaint. It grows out of another set of facts, which is a difference between the competitive and non-competitive points out on another railroad.

Commissioner CLARK: The difference at Billings, I think you will find is 32 cents, which is a Montana common point. You will find at Seattle the same difference of 32 cents. It is a difference between \$1.15 and \$1.47 reflected out to the Pacific Coast common points, the difference between 32 and 69 being a question of rates on the Northern Pacific Railroad locally, and not in issue here at all.

Mr. WEBSTER: Let me draw your attention to paragraph 9 of the complaint, which I think will show a little wider scope. It may not

be that the difference between \$1.15 and \$1.47, towit, 32 cents, may fix the rate to point of destination and to all points that may appear on that map. Of course other considerations may enter into fixing the rate to some of these points, but it is very pertinent to show what the actual result is, and then it may become a point of discussion perhaps hereafter as to how far and to what extent these ultimate results are brought about by having the rate of \$1.15 to the
1559 twin cities, and the rate of \$1.47 to the Missouri River crossings. In paragraph 9 there is this: "These complainants further show that large portions of territory served by these complainants are also served by persons, firms and corporations in the same kind of business, who receive their shipments from the initial eastern points at St. Paul and Minneapolis; and the complainants further allege that the defendant railroad companies and each of them for a long time past have been and now are engaged in transporting freight from the Atlantic seaboard westward through the cities of Kansas City, St. Joseph and Omaha, to be delivered to persons other than these complainants and at points of destination hundreds of miles west from said cities of Kansas City, St. Joseph and Omaha, and at per ton per mile rates that are less than the per ton per mile rates charged to these complainants, and in many instances said rates charged by defendant companies for transportation to said ultimate and remote points of destination, are less than the per ton per mile rate charged to these complainants, wherein and whereby the defendant companies unjustly discriminate against these complainants." Of course that is somewhat general in
1560 its language, I confess, and is not a direct charge of any particular rate fixed for instance, by the Great Northern, or the Northern Pacific, between St. Paul and Minneapolis, to any particular point, as to its being unfair or an excessive rate. There is not a specific charge as to that point, I grant, but in so far as the other rates entered into it, and within the scope of this pleading, it struck me very proper that the Commission should be advised of what is the ultimate result based on these tariff sheets for its general information, and so far as it may reflect conditions upon the trade. Therefore I can see no impropriety in the admission of the map or the contents of the statement thereon of the rates to all these points. Of course I can see the Commission will only consider it ultimately so far as it has any bearing on the issues in this case.

Commissioner CLARK: I do not understand the map is objected to.

Mr. HOLDEN: The map is all right, and in some respects the comparisons may be pertinent and again there may be others there that are not pertinent. I am satisfied with the explanation and
1561 statement of the Commissioner. I think we are all agreed on the subject. I understand the map is admitted?

Commissioner CLARK: Oh, yes.

Said map was marked as Complainants Exhibit No. 2-A and is herewith transmitted.

Mr. WEBSTER: I desire to ask whether or not your attention has been called to the answer of the New York Central in this case, and the roads which are under its control,

Mr. McVANN: Yes, sir; I read the answer of the New York Central.

Mr. LYNDE: Have you a copy of that answer here, Mr. Webster?

Mr. WEBSTER: Yes, sir. The answer referred to is the answer of the New York Central & Hudson River Railroad Company, answering also as lessee of the Boston & Albany Railroad, and the West Shore Railroad, the Rutland Railroad Company, the Lake Shore & Michigan Southern Railroad Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Michigan Central Railroad Company, the Chicago, Indiana & Southern Railroad Company, the Indiana Harbor Railroad Company, and the Lake
1562 Erie & Western Railroad Company. To get it into the record so that we may all understand it, I desire to ask if your attention has been particularly called to the following part of paragraph 10 of the said answer: "That the said rates for the first five classes governed by the official classifications from New York to East St. Louis of 87 cents, 75 cents, 58 cents, 41 cents, and 35 cents per 100 pounds respectively, are applied as proportional rates to the various Mississippi River crossings north of East St. Louis and to and including East Dubuque, Illinois, and that from other eastern points than New York City the rates to East St. Louis apply equally to said Mississippi River crossings and all of such rates to such Mississippi River crossings apply uniformly upon all shipments destined to all points west of the Mississippi River and east of Pacific Coast terminals, and points taking the same rates."

Mr. McVANN: Yes sir; I remember that.

Mr. WEBSTER: From that statement in the answer of the railroad companies just read to you, have you made a computation of the rates which would be earned between Chicago and the
1563 Mississippi River points on the basis of the 87 cent rate.

Mr. McVANN: Yes, sir.

Mr. PEIRCE: May I ask you just what you mean by that question? I don't believe I catch the point of it.

Mr. WEBSTER: My objective point is this, that the 87 cent rate applies to the Mississippi River points. The answer states in another paragraph that the proportion maintained by the rates from Atlantic seaboard to Chicago still remains $72\frac{3}{10}$, which leaves the amount to be earned for the haul from Chicago to the Mississippi River crossings from Dubuque on the north and East St. Louis on the south, of but $14\frac{3}{10}$ cents per 100 pounds I am asking this witness if he made a computation to find out the Mississippi River points.

Commissioner CLARK: What is the difference between 87 and $72\frac{3}{10}$?

Mr. WEBSTER: Practically in a measure that is it. The thought in my mind was to get something particular into the record, so we won't have to go home and make our own computations. The table shows these computations in a way, I guess.

1564 Commissioner CLARK: Do we understand that Mr. McVann has prepared tables and statements setting forth these points that you have been inquiring about?

Mr. WEBSTER: Yes, sir.

Commissioner CLARK: Couldn't we expedite matters and get the same results if you hand copies of your tables and statements to the other side, and then let the witness identify them as his statements and say what there is in each one and put it in evidence?

Mr. WEBSTER: Certainly. I will ask you, Mr. McVann, a general question in reference to that paper. Have you prepared a table covering some two or three pages, showing the computations as the result of these tariffs referred to in the answer of the New York Central and its subsidiary lines?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: Is that table which is now in your hands a correct statement of the results of your computations?

Mr. McVANN: Yes, sir; it is a correct copy.

Commissioner CLARK: Just tell us concisely what that exhibit you have in your hands contains and what it purports to show?

Mr. McVANN: It contains first the rate from New York to the Mississippi River points mentioned, East Dubuque to East St. Louis inclusive, applied on business destined west of the Mississippi River. It also contains the figures given in the answer of the New York Central Railroad, showing their proportion of the Mississippi River rates which they earn and retain up to Chicago, and, by subtraction of one from the other, what is left for the lines from Chicago or Chicago junction points to the Mississippi River, which is a basing rate to the Missouri River and other western points. It also contains what you might call a hypothetical rate made out of the existing local tariff rates from New York to Chicago on the 70 cent scale added to a hypothetical rate produced by taking the proportion actually earned by the western lines of the Mississippi River rate and extending that on a mileage basis to the mileage applicable to the Missouri River. The addition of those two amounts gives a hypothetical rate which would be the rate if it were made on that basis—in other words, on the basis of the earnings of the Chicago-Mississippi River line on Chicago-Missouri River business.

Mr. WEBSTER: You have also a table showing the mileage distance from Chicago to the Mississippi River points, and also from Chicago to the Missouri River points?

Mr. McVANN: Yes, sir; to the Mississippi River crossings named and from Chicago to Omaha, St. Joseph and Kansas City, and from the Mississippi River points named to Omaha, St. Joseph and Kansas City, giving the names of each railroad and each distance.

Mr. WEBSTER: I offer that exhibit in evidence.

Commissioner CLARK: The exhibit will be admitted subject to any corrections counsel for the other side may point out as necessary to correct, or any inaccuracies that may have crept in as to the figures.

Said table was marked as Exhibit No. 3, and is transmitted herewith.

Mr. WEBSTER: Mr. McVann, from your general knowledge are you prepared to state whether there is any great dissimilarity of

1567 conditions existing on the lines of railroads between Chicago and Mississippi River points and between the Mississippi River and the Missouri River points?

Mr. McVANN: You mean as to construction and operation of these?

Mr. WEBSTER: Yes, sir; and topography of the country.

Mr. McVANN: Speaking as an observer, and not an engineer, which I am not, I should say there is no material difference in operation between the lines from Chicago to the Mississippi River, and the lines from the Mississippi River to the Missouri River, generally speaking from my own observation of the country through which they run.

Mr. WEBSTER: Have you taken occasion to examine into the rates from the Atlantic seaboard to St. Paul and Minneapolis with reference to competition by water or otherwise?

Mr. McVANN: Yes, sir; to some extent.

Mr. WEBSTER: Will you state to the Commission the result of your investigations as to whether or not those rates referred to, \$1.15, etc., have in any manner affected or have been affected in any manner by water competition and water rates, and if not, state
1568 why not?

Mr. McVAN: I have looked into the history of the seaboard and Chicago rates to St. Paul at Minneapolis as disclosed by the tariffs on file with the Commission, of the West Trunk Line Committee, as far back as those files go. I have also examined the tariffs of the Lake lines as far as I could. I was not able to go back very far in my examination of the lake line tariff, because of the condition I found in the records there. The clerks in charge of the lake line files were not apparently able to give me any tariffs older than about two years ago. However, as to the lake line tariffs, I have some direct knowledge of my own due to the fact that for ten or twelve years I was an agent of one of those lines, and was regularly supplied myself with its tariff, and I know in a general way what those tariffs are back of the period during which the Commission had in its office the tariffs which I was able to examine there. It has seemed to me from that examination of the water tariffs to St. Paul and Minneapolis, and the rail tariffs by way of Chicago to St. Paul and Minneapolis, which it is alleged are affected by the water tariffs—it struck
1569 me that the fluctuations in the rail tariffs by way of Chicago to St. Paul and Minneapolis did not at all bear out that theory of being affected by the water tariffs. That is to say there were a great many changes made in the rail tariffs which seemed to bear out that idea of advances, we will say, in the middle of the season of navigation, in the rail rates, or reductions at a time of the year when the water routes were closed and could not possibly affect the rail rates—and a great many facts of that nature. These things all seem to militate against the theory that the rail rates were affected by the water rates, most particularly this fact, and I think I am safe in saying that the differential between the rail and lake rates from the Atlantic seaboard to St. Paul and Minneapolis today and the all rail rates from the seaboard to St. Paul and Minneapolis via Chicago—that the differential is less today than it ever was—that is, if

that is a fact. Now that differential tracing it back six or ten years ago, as you please, was very much wider. Place it back definitely six years ago when the present \$1.15 scale was put in effect, then the rail and lake rates were somewhat lower to St. Paul and 1570 Minneapolis than today. If they control the making of the all rail rate by way of Chicago, obviously the desire of the Chicago-St. Paul railroads to get all the revenue they could would cause them to raise their rate from Chicago to St. Paul when the lake and rail rates were raised to St. Paul, I think. I think that is a fair conclusion, and that process of reasoning led me to believe that the lake and rail rates were not a controlling factor in making the all rail rate by way of Chicago; that those rates were made for other reasons and through other controlling causes.

Mr. WEBSTER: Directing your attention to one or two features, state whether or not it be true as a fact that the rate from the Atlantic seaboard to Chicago and the amount retained by the roads from the Atlantic seaboard to Chicago is not the same or substantially the same, whether the freight is consigned to Minneapolis or St. Paul, or whether the freight be consigned to Omaha, St. Joseph or Kansas City, points at which it is not possible there should be any water competition.

Mr. McVANN: The rate from New York to Chicago that 1571 is applied on and a part of St. Paul and Minneapolis business is what is known as a through rate to those points, and is 75 cents first class. The rate made and retained from Chicago on Mississippi River business differs slightly from that, being an arbitrary percentage of what is known as the 87 cent scale to the Mississippi River. It figures fifty-two and a fraction as against 75 on the St. Paul business.

Mr. WEBSTER: If goods are consigned to St. Paul and Minneapolis, there is retained by the railroad companies east of those points more than if the goods are consigned to Mississippi River points?

Mr. McVANN: In the first class that is true, and I think it is true of the others.

Mr. WEBSTER: Then the difference between the St. Paul and Minneapolis, and the Omaha, St. Joseph and Kansas City rate is the difference in the rate substantially between Chicago and St. Paul and Minneapolis on the north, and between Chicago and Omaha and St. Joseph, Kansas City on the southwest?

Mr. McVANN: It is the difference in the amount earned by the railroad from Chicago to St. Paul and Chicago to Kansas City.

1572 Commissioner CLARK: Do the railroads east of Chicago make the same earnings on traffic whether it goes to Kansas City or St. Paul?

Mr. McVANN: They make more money on the higher classes when the traffic is destined to St. Paul, because they obtain their full local New York-Chicago rate on that business. They retain that. In the case of the Mississippi River business, they earn a little less, because their proportion of the 87 cent rate happens to be 72.4.

Mr. WEBSTER: They retain on the shipments to St. Paul and Minneapolis what?

Mr. McVANN: 75 cents first class.

Mr. WEBSTER: If the consignment is for Kansas City or St. Joseph, the eastern roads retain what?

Mr. McVANN: 72.4, I think is the amount.

Mr. WEBSTER: If you can mention the tariff sheets—tell me first if you have examined the tariff sheets of the Soo Line?

Mr. McVANN: Yes, sir, I did.

Mr. WEBSTER: Can you state upon what those are based? You may make reference to them, and give the numbers, so the
1573 Commission may know what you are referring to.

Mr. McVANN: I made a very thorough examination of the Soo Line tariffs on file in the office of the Commission because of the allegation in the answers of the railroads to which you drew my attention, that the rates to St. Paul and Minneapolis were justified very largely by the competition of the Soo Line. I was able to go into that subject very thoroughly from the fact that the file of the Soo Line tariff was accessible from the first tariff filed by the Soo Line with the Commission down to the present time. I examined carefully all of the Soo Line tariffs bearing the emergency rates and applicable on St. Paul and Minneapolis business from the seaboard. The principal point that I found was this: The Soo Line tariff in earlier days, along in 1897—for instance, Soo Line Tariff G. F. D. 2247, bearing Interstate Commerce Commission No. 239, effective August —, 1897—being a proportional joint freight tariff between the Soo Line points, such as Sault Ste. Marie, Mackinaw City, and Kewanee, Wisconsin, to Minneapolis and St. Paul—instead of pursuing the usual course of a railroad tariff in naming
1574 specific figures per 100 pounds, is what we call ordinary an application sheet, and makes effective not specific rates, but the same rates as are named in joint freight tariffs Nos. 9 and 10, effective April 1, 1897, joint freight tariff No. 17, effective August 2, 1897, special circular number 16, issued March 15, 1897, and circular number 23, issued July 12, 1897, published by J. W. Midgeley, Chairman, Chicago, "Or as they may be amended or re-issued." That tariff remained in effect until July 26, 1898, and simply applied to the business moving over the Soo Line, the rates that were then in effect by the rail lines from Chicago to St. Paul and Minneapolis. That tariff was cancelled by I. C. C. No. 433, Soo Line, G. F. D. 2558, effective July 26, 1898. This tariff contained precisely the same provisions as number 239, except that it refers to other tariffs of the Western Freight Association, or whatever the Western Trunk Line Committee was called at that time,—joint freight tariff No. 28, effective January 1, 1898, joint freight tariff No. 104, effective June 24, 1896, and special circular No. 51, issued March 1, 1898, "Or as they may be
1575 amended or re-issued." This issue makes these rates effective via the Soo Line but does not name the rate but merely applies the rates in these enumerated tariffs of the Western Freight Association or whatever it was called at that time. I carried that investigation through the various years 1898 and so on, and that plan remained in effect practically until the present time.

Mr. LYNDE: Have you a copy of that tariff No. 239?

Mr. McVANN: No, sir; I haven't. There was but one copy in the files of the Commission. I asked the clerk of the Commission to give me a certified copy of it, but he said he did not think it was necessary to have it. I had no other means of obtaining any copy and I asked for it in that way, and when I found it was not necessary I just took these memorandums right from the face of the tariff.

Commissioner CLARK: You say the rates via the Soo Line now are made by application sheets?

Mr. McVANN: I don't understand that is so now. As far as I carried this thing down, this application sheet was in effect last summer when I made these figures, apparently, according to the files.

Commissioner CLARK: What is the latest memorandum 1576 you have there on that point?

Mr. McVANN: This is tariff I. C. C. 462, of the Soo Line, and remained in effect until July 8, 1907, with no particular amendment of importance.

Commissioner CLARK: Simply applying the rates shown in the Western Trunk Line sheets?

Mr. McVANN: The Various Western Trunk Line issues as they went along. The latest record was on June 2, effective June 8, 1904, amendment 4, issued referring to the rates shown in joint freight tariff W. T. L. 181 and joint freight tariff W. T. L. 185. That in a general way is the application of the rates from these junction points of the Soo Line to St. Paul and Minneapolis that correspond with Chicago and Chicago junctions of the all rail lines from Chicago. It does not apparently show that the Soo Line was the controlling factor.

Mr. ELLIS: What was the combination of locals based on the Soo? From Montreal via the Soo to St. Paul, what was the combination of the locals?

Mr. McVANN: I could not say without reference to the Western Trunk Line tariffs naming the specific rates. There were no 1577 specific rates named in any of these application sheets of the Soo Line, and they referred to the other tariffs. I am unable to give you that specific information.

Mr. ELLIS: If the combination of the locals on the Soo reduced the through rate, the other lines would have to reduce to meet it, wouldn't they, and then this application sheet would apply that as a through rate?

Mr. McVANN: I cannot see the drift of your question.

Mr. ELLIS: I will look up the tariff and ask you about it again more specifically.

Commissioner CLARK: Did you look into the question of rates from the Atlantic seaboard via Montreal and the Soo to St. Paul?

Mr. McVANN: Yes, I looked into the question of rates from Portland, Providence, Boston and New York.

Commissioner CLARK: Via Montreal?

Mr. McVANN: There were no Canadian Pacific tariffs that I could find naming those rates to the Soo. The Soo Line tariffs name their rates from the junctions which they made with the Canadian

Pacific and with the other lines both as local rates and proportional rates on business originating at the seaboard. That apparently was the only rate I could get hold of that bore on the rates applied by the Canadian Lines. The Soo Line was the only way that line had to get into St. Paul and Minneapolis, and their policy was to make the same rates as were made from the Chicago *munction* by the other rail lines.

Commissioner CLARK: Did you look up the rates by the Canadian Pacific to Sault Ste. Marie?

Mr. McVANN: If I remember correctly I was told by the gentleman at the Commission that those rates were not on file with the Commission.

Commissioner CLARK: I did not ask you if you found them there. Did you look them up anywhere?

Mr. McVANN: I had no means of knowing what it was. I have not investigated that.

Mr. WEBSTER: Is there anything further you care to say on that point relating to the Soo Line tariff sheet to which I called your attention?

Mr. McVANN: No, I do not know of anything.

Mr. LYNDE: You were using certain memorandums. Would you let me have your memoranda as to these tariffs? I could not follow you very fully.

1579 Mr. McVANN: The numbers?

Mr. LYNDE: Yes, the memoranda as to the Soo Line tariff—you referred to it and read from it.

Mr. McVANN: Yes, Mr. Webster will no doubt let you have it.

Mr. WEBSTER: I will present in a moment a paper which I think will contain the references desired, and which I propose to offer in evidence. For the purposes of this examination, will you look at this paper which I now hand you, Mr. McVann? Are you advised as to the rate from the Atlantic seaboard to St. Louis?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: Have you prepared a statement showing the mileage distances from New York to Chicago, and St. Louis, and likewise from New York to Kansas City?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: And the basis of rates from New York to St. Louis is what?

Mr. McVANN: Do you want the figures or the basis?

Mr. WEBSTER: Yes, what are the figures from New York to St. Louis?

Mr. McVANN: First class is 87, second class is 75, third class is 58, fourth class 41, and fifth class 35.

1580 Mr. WEBSTER: Now on that basis, what would the rate be to Kansas City?

Mr. McVANN: New York to Kansas City?

Mr. WEBSTER: Yes, sir.

Mr. McVANN: First class \$1.47, second class \$1.20, third class 93 cents, fourth class 68 cents, fifth class 57 cents.

Mr. WEBSTER: That is what it is. I am asking another question,

and you misunderstood me. What I am asking is, what would be the rate if it were computed on the same mileage basis as the rate from New York to St. Louis?

Mr. McVANN: The rate to Kansas City is extended on the same mileage basis as is used in making the rate from New York to St. Louis; would be \$1.10 first class, 95¼ second class, 72½ third class, 51½ fourth class, and 44 fifth class.

Mr. WEBSTER: That would be less, would it not, than the rates which these complainants ask for in this hearing?

Mr. McVANN: Yes, if I understand that you were asking for the St. Paul basis.

1581 Mr. WEBSTER: That would be \$1.10 where we are only asking for \$1.15?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: On that basis the rate would be from Chicago to Omaha, Kansas City and St. Joseph—37, would it not, if computed on the same mileage basis where it is now 75?

Mr. McVANN: I did not quite understand your question.

Mr. WEBSTER: Computed on the same mileage basis as it is from New York to St. Louis, what would be the rate from Chicago to Omaha, St. Joseph and Kansas City?

Commissioner CLARK: Which one do you mean? The mileage is not the same to all three.

Mr. WEBSTER: I will have to take the short line basis, I suppose.

Commissioner CLARK: The short line basis to where and from where?

Mr. WEBSTER: If you take it from Chicago to Omaha, it would not be the same as from Chicago to Kansas City. I must confess there would be some little difference. Suppose I just pass that for a minute. When I get a table which has all of the distances
1582 and the mileage basis, I will then renew that, when I have that table in front of me. Now, Mr. McVann, calling your attention again for a moment to the computations which are on the first page of Exhibit which I just handed you, are the figures and table which are set down on that page the result of your computations and if so, what is your opinion as to whether or not they are correct?

Mr. McVANN: In this same exhibit?

Mr. WEBSTER: Yes, sir; on what is marked page one.

Mr. McVANN: Yes, sir; they are correct.

Mr. WEBSTER: And that is the page which gives the distances from New York to Chicago and New York to Kansas City, and the respective rates from New York to St. Louis and to Kansas City?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: Have you advised yourself as to the manner of arriving at the division of rates between the railroads between the Atlantic seaboard to Chicago, and the railroads west from Chicago to the Missouri River crossings?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: How is that rate divided?

1583 Mr. McVANN: The rate for example, to Omaha or Kansas City from Chicago?

Mr. WEBSTER: Yes, sir.

Mr. McVANN: The railroads east of Chicago receive as their proportion on first class $72 \frac{3}{10}$, on second class $62 \frac{4}{10}$, on third class $48 \frac{4}{10}$, on fourth class $34 \frac{3}{10}$, and on fifth class $29 \frac{4}{10}$ if the business moves through Chicago. The railroads west of Chicago receive of the \$1.47 remaining, on first class $74 \frac{7}{10}$, on second class $57 \frac{6}{10}$, on third class $44 \frac{5}{10}$, on fourth class $33 \frac{7}{10}$, and on fifth class $27 \frac{6}{10}$.

Mr. WEBSTER: Have you made a computation to ascertain what would be the earnings by the roads west of Chicago to the Missouri River crossings, providing the reduction was made which the complainants seek in this case, and the railroads from the Atlantic seaboard to Chicago retained the proportion of the through rate which they now retain?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: What would be the earnings in that event to be retained by the roads west of Chicago between Chicago and the Missouri River?

1584 Commissioner CLARK: Do you mean if the roads east retain the proportion or the portion?

Mr. WEBSTER: Retained the present portion.

Commissioner CLARK: You said proportion?

Mr. WEBSTER: I thank you for the correction.

Mr. McVANN: If the rates asked for in your petition were granted and the eastern roads retained the same earnings as they now retain out of the 87 cent sale, it would result in giving the western roads $27 \frac{7}{10}$ cents on first class, $32 \frac{6}{10}$ cents on second class, $34 \frac{1}{10}$ on third class, $15 \frac{24}{100}$ on fourth class, and $14 \frac{6}{10}$ on fifth class.

Mr. WEBSTER: How would that compare with earnings of roads West of Chicago, between Chicago and the Mississippi River on the basis of the answer of the New York Central?

Mr. McVANN: This remainder?

Mr. WEBSTER: Yes, sir.

Mr. McVANN: I can only recall from memory the figure on first class of $14 \frac{7}{10}$ from Chicago to the Mississippi River. I do
1585 not know that you state your question clearly.

Mr. WEBSTER: Have you made an investigation and comparison or tables to show the comparison on a mileage basis of the present earnings of the railroads between New York and Chicago and the railroads from Chicago to Minneapolis and St. Paul based on the present through rate of \$1.15, referring to page 3 of the exhibit in your hand?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: What is the fact as to whether or not the present portion of the rate retained by the roads between Chicago and Minneapolis and St. Paul is not substantially, on a mileage basis, the same as now charged by the railroads between New York and Chicago?

Mr. McVANN: I did not quite get that question.

Commissioner CLARK: At the present rate between Chicago and St. Paul, do they yield substantially the same rate per ton per mile as the present rates between New York and Chicago?

Mr. McVANN: I cannot seem to grasp that question.

Mr. WEBSTER: Let the stenographer read the question asked by the Commissioner.

1586 The STENOGRAPHER (Reading): At the present rate between Chicago and St. Paul, do they yield substantially the same rate per ton per mile as the present rates between New York and Chicago?

Mr. McVANN: I cannot answer that question off hand.

Commissioner CLARK: That was my understanding of what Mr. Webster asked.

Mr. WEBSTER: The Commissioner has asked exactly what I intended to ask. You may make your computation a little later on. The point I want to get at is this: I want to establish that the railroads are today carrying freight from Chicago to Minneapolis and St. Paul at a rate per ton per mile substantially the same as the rate charged per ton per mile from New York to Chicago, the result following that if the roads west of Chicago can carry it as cheap as from New York to Chicago, why can't they carry it at the same rate from the Mississippi River to the Missouri River? Ultimately I would get to that. Of course, there is a little argument injected into that, but it is for the purpose of explaining it to the witness. However, I will pass that for the moment. Calling your attention

1587 to what you stated a *moemtn* ago would be the portion of the earnings of the roads west of Chicago—that is, from Chicago—the Missouri River—if rates were reduced as prayed for, I will ask you whether you have made investigation to ascertain the fact whether or not the railroads west of Chicago are not today carrying freight destined to western points at a rate even lower than the rate would be if so reduced?

Mr. McVANN: Yes, I made some investigation into the actual earnings of railroads from Chicago to the Missouri River on business destined southwest and west, and to the Pacific Coast, and other points, and I th~~nk~~ speaking from memory of my figures that they are actually carrying a good deal of that freight at earnings that are less than the rates set down here that they would earn on the basis of this computation.

Mr. WEBSTER: Taking the basis of the portion earned by the roads west from Chicago to Mississippi River crossings, to wit, 14 cents and a fraction, based on the answer of the New York Central, and making a computation based on the mileage from Chicago to the Missouri

1588 River, can you state what then would be the ratio or earnings on the roads west of Chicago and *gtween* Chicago and the Missouri River points? Look at the bottom of page 4 and you will find a computation that may refresh your memory?

Mr. McVANN: On business by way of Chicago from the seaboard, destined to St. Louis, the lines west of Chicago retain as their proportion of the through rate 14 7/10 cents, on first class, 12 6/10 on

second class, 9 6/10 on third class, 6 7/10 on fourth class, and 5 6/10 on fifth class.

Mr. WEBSTER: Is that not about the same as would be earned by the roads west of Chicago, between Chicago and Mississippi River points, based on the 87 cent rate referred to in the answer of the New York Central? I think it is precisely the same.

Mr. McVANN: I suppose it would be the same. At least it is the same on the first class.

Mr. WEBSTER: What is the mileage distance between Chicago and East St. Louis upon which you base the figures which you just gave?

Mr. McVANN: 234 miles by the Chicago & Alton Railroad.

Mr. WEBSTER: On that basis the rate from Chicago to the Missouri River would be what?

1589 Mr. McVANN: On the basis of an arbitrary distance of 500 miles, Chicago to Omaha, the rates from Chicago to Omaha based on those earnings would be 26 cents first class, 22 cents second class, 17 cents third class, 11 cents fourth class, and 10 cents fifth class.

Mr. WEBSTER: Do you know for about how many years that rate has been in force from Chicago to East St. Louis—14 cents for 284 miles?

Mr. McVANN: No, I do not. The rate of 87 cents, of which that is a part, has been in force for a great many years, but whether the division which controls that computation is the same now as it has been I do not know.

Mr. WEBSTER: Passing that point, and drawing your attention to the rate from Chicago to St. Paul and Minneapolis, based on the mileage from Chicago to St. Paul and Minneapolis, have you made a computation as to what would be the earnings of the roads between Chicago and Missouri River crossings, computed on the same mileage basis?

Mr. McVANN: The roads from Chicago to St. Paul and Minneapolis earn on the basis of 430 miles short line as their proportion of the seaboard business, 40 cents on first class, 34 cents on second class, 23 cents on third class, 18 cents on fourth class, and 16 cents on fifth class. Based on this rate from Chicago to St. Paul and Minneapolis, and the mileage Chicago to Omaha the rate from Chicago to Omaha would be not more than 45 cents first class, 38½ cents second class, 2¼ cents third class, 20¼ cents fourth class, and 18 1/5 cents fifth class.

Mr. HOLDEN: What do you say the short line distance is from Chicago to St. Paul?

Mr. McVANN: 430 miles.

Mr. HOLDEN: Your complaint shows by the Milwaukee it is 410 miles.

Mr. WEBSTER: I think that is the average of the distances, 430. I think if you will look at it you will find the 45 cents was based on a like average mileage distance between Chicago and Omaha.

Mr. ELLIS: Are the Great Western and Rock Island included in that average?

Mr. WEBSTER: I think so.

Mr. McVANN: I do not recall now.

1591 Mr. WEBSTER: The table referred to does not state that that is computed upon a short line basis. Mr. McVann, have you also made a computation as to the earnings of the roads between Chicago and the Missouri River crossings on goods consigned to Pacific Coast points otherwise known as Pacific Coast business?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: With what result?

Mr. McVANN: On the shipments from New York to Pacific Coast terminals the lines east of Chicago retain about 75 cents first class. The lines from Chicago to the Missouri River get as their proportion of the balance 33.75 first class. This allows the roads east of Chicago their full local rate.

Mr. WEBSTER: The roads west of the Missouri River get the balance?

Mr. McVANN: They get the balance on the first class; yes, sir.

Mr. WEBSTER: The amount retained by the roads between Chicago and the Missouri River on Pacific Coast business bears what relation or ratio to the rate now charged and retained between Chicago and Missouri River crossings on local business?

1592 Mr. McVANN: It is less than half—what they get on seaboard business.

Mr. WEBSTER: On what is known as Pacific Coast business is there any reduction in the rate between New York and Chicago, or is the reduction entirely by the roads west of Chicago?

Mr. McVANN: The rates east of Chicago—those roads there east of Chicago retained their local rate up to Chicago.

Mr. WEBSTER: Have you made a table showing what may be retained by the roads west of Chicago on freight consigned to Oklahoma City, taking that simply as an illustration?

Mr. McVANN: On a rate of \$1.20 per hundred from Chicago to Oklahoma City, the railroad from Chicago to Kansas City retains 48 cents. There seems to be some error in this copy here, Mr. Webster.

Mr. WEBSTER: There is in the second class an error, but I will ask now as to what is retained by the roads west. There is a typographical error there that we will have to correct.

1593 Mr. McVANN: On the first class rate of \$1.20 from Chicago to Oklahoma City, the rate from Chicago to Kansas City—48 cents of that is retained by the road from Chicago to Kansas City as their proportion.

Mr. WEBSTER: Have you got a pencil memoranda somewhere that will give you that correct figure? I think it is \$1.00 but I am not sure about it. It is put down \$1.29, but I think it is the wrong figure struck by the typewriter.

Mr. LYNDE: Do all of these figures bear on the same statement you are giving there?

Mr. McVANN: Yes. I will offer this statement.

Mr. LYNDE: Have you made some copies of it?

Mr. WEBSTER: I haven't got but the two, the one I am using and

the one the witness has. I thought I had another one, but I do not find it here.

Mr. McVANN: I have among my memorandums the correct tariff rate which will enable me to correct that error. I do not now recall what that should be.

Mr. WEBSTER: The error I want to correct is under subhead D. Have you made computation of what are known as rates to
1594 Texas common points to find what is the amount retained by the roads between Chicago and Missouri River crossings?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: You may state what is retained by the railroads under those circumstances?

Mr. McVANN: On business from Chicago destined to Texas common points, the rate on first class from Chicago to those points is \$1.57, of which the roads from Chicago to Kansas City retains 30 per cent or 47 1/10 cents.

Mr. WEBSTER: Have you made a like computation to find what is retained by the roads west of Chicago, and between Chicago to the Missouri River crossings on consignments to El Paso?

Mr. McVANN: Yes, sir; the Chicago rate to El Paso is \$1.69 first class, and the lines Chicago to Kansas City receive 47 1/10 out of that.

Mr. WEBSTER: Are you sufficiently familiar with the lines of railroads running from Chicago to Minneapolis and St. Paul to speak to the point as to whether the conditions are similar or dissimilar to the conditions existing between Chicago and Omaha, St. Joseph and Kansas City?

1595 Mr. McVANN: I am pretty familiar with the main lines of railroads from Chicago to St. Paul and Minneapolis and from Chicago to Omaha, Kansas City and St. Joseph. I have been over all of them except the Santa Fe and the Wisconsin Central frequently, and on all classes of trains, and I have had occasion to observe them from the standpoint of a practical railroad man who is not an engineer, and from the standpoint of my experience I should say that, generally speaking, the conditions topographically and so on are the same—that is, that the operations of railroads from Chicago to Missouri River cities do not present any particular difficulties that were not presented also in the operation of railroads from Chicago to St. Paul and Minneapolis, and about the only difference I would say generally was the difference in distance, a small amount of difference in distance.

Mr. WEBSTER: Have you made like computations on consignments to Colorado common points and Utah common points found on the bottom of page 6 of this exhibit, subdivisions A and B together with the mileage. Just state whether or not they are correct as set down there.

Mr. McVANN: Yes, I have made such computations of the
1596 rates to Colorado common points.

Mr. WEBSTER: Have you likewise made examination and compared some tables of rates as applied to cotton piece goods on the subdivision of earnings between New York and Missouri River lines?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: And also as to cotton duck sheeting and bagging, and so forth?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: And are those figures set down in these tables correct so far as you are able to determine?

Mr. McVANN: Yes, I think they are correct.

Mr. WEBSTER: Have you made a like computation and table after the rates on boots and shoes and drugs and medicines and chemicals?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: Without further detail, I will ask you whether or not the figures and facts stated in that exhibit which you have in your hands, with the one exception of the item spoken of heretofore, which we confess to be an error, are correct?

Mr. McVANN: Yes, sir; they are correct; I think they are.

1597 Mr. WEBSTER: I then offer in evidence that exhibit with the privilege of correcting the confessed errors.

Commissioner CLARK: We will file that as an exhibit to Mr. McVann's testimony, subject to correction by counsel on the other side after they have had an opportunity to examine it.

Said table and statement was marked as Complainant's Exhibit No. 4, and is herewith transmitted.

Mr. WEBSTER: Have you prepared a plat or map showing the territory surrounding the cities of Omaha, St. Joe and Kansas City, accompanied by another map showing the table of rates to the various towns marked on the said map, routed either by Chicago or by St. Louis or by Minneapolis or St. Paul, as the case may be?

Mr. McVANN: By Minneapolis and St. Paul and St. Louis, Omaha, and Kansas City; yes, sir.

Mr. WEBSTER: Are the maps which I now show you, being blue prints, the one showing the names of towns and the freight rates to the said towns by the different groups of shipments marked thereon, the other showing the Omaha, St. Joe and Kansas City and surrounding towns, as the result of your investigation, correct as they were prepared by yourself?

1598 Mr. McVANN: Yes, sir. They were prepared by me and they are correct in the main, I think. I think they are almost absolutely correct. I checked them very carefully with the best sort of information I had, and I think they are substantially correct both as to the rates and mileage.

Mr. WEBSTER: We offer the said two maps in evidence, which go together.

Mr. HOLDEN: We do not like to be committed to this at this time until we have had an opportunity to examine it.

Commissioner CLARK: They may be admitted subject to opportunity to check and be examined and corrected by the defendants.

Said two maps were marked Complainant's Exhibit 5-A. and Complainant's Exhibit 5-E. and are herewith transmitted.

Mr. WEBSTER: Let me ask you whether you made an examination of the annual reports of the railway companies on file with the Interstate Commerce Commission with the view of ascertaining certain facts as to the cost of operation and maintenance—first, with reference to the cost of fuel by the various railroads?

1599 Mr. McVANN: Yes, sir.

Mr. WEBSTER: In relation to the *psprt chivh* you *noe* hold in your hand, and to which I call your attention and on page 3, I will ask you to state whether or not the fuel cost set down on that page of the different railroads therein referred to, is correct as you found it in the annual reports of the railway companies therein named?

Mr. McVANN: Yes, sir; I think it is.

Commissioner CLARK: I would like to suggest, if you will let Mr. McVann state what this exhibit purports to set forth, and whether it was prepared by him, and whether or not it is correct, and then let it be filed subject to checking, it will save considerable time.

Mr. WEBSTER: Yes, sir; if that will shorten it a little.

Commissioner CLARK: We will save a great deal of time that way.

Mr. WEBSTER: You may state what that exhibit in your hands contains, referring to it by one page after the other.

Mr. McVANN: The first page contains a table showing the 1600 average cost of coal on various representative railroads east of Chicago and west of Chicago, and east of the Missouri River. Those figures were obtained from the annual report of these railroads on file with the Commission.

Commissioner HARLAN: For what period of time?

Mr. McVANN: The year ending June 30, 1906. I took the representative railroads east of Chicago and west of Chicago to St. Paul and to the Missouri River. The table shows the New York Central, the Lake Shore, the Pennsylvania, the Chicago & Alton, the Wisconsin Central, the Chicago, Burlington & Quincy, the Chicago Northwestern, Chicago, Rock Island & Pacific Railways east of the Missouri River, and the Rock Island entire system.

Commissioner CLARK: With what result as compared with lines east of Chicago and those west of Chicago?

Mr. McVANN: The cost of the fuel averages about 10 per cent of the operating expenses of all those roads. The gross fuel account of the western roads was about \$5,000,000 a year. The cost of coal on the roads west of Chicago and east of the Missouri River is on the average a little higher than on the roads east of Chicago. The 1601 percentage of difference in the average—

Commissioner CLARK (interrupting): You mean the sum total or does that purport to show the cost per ton?

Mr. McVANN: This shows the average cost of coal per ton taken from their annual reports. I did not verify that. I simply accepted it.

Mr. LYNDE: All those roads together as a whole?

Mr. McVANN: No, the average is shown of each road as shown by its annual report. The average I speak of here is an arbitrary average of about 10 per cent.

Mr. WEBSTER: To get one pointed statement into the minutes of the Commissioners, the cost per ton of the Lake Shore & Michigan Southern is what?

Mr. McVANN: \$1.63.

Mr. WEBSTER: Take the Chicago, Burlington & Quincy east of the Missouri River, which is a standard line, and it is what?

Mr. McVANN: \$1.54. The operating expenses of the C. B. & Q. for that year were \$50,000,000 in round numbers, and fuel account \$5,000,000 in round numbers. To reduce the fuel account of the C. B. & Q. to the cost of fuel on the New York Central, would reduce the gross fuel account of the C. B. & Q. \$200,000 in round 1602 numbers. That is to say, if the C. B. & Q. had to pay the same price for coal as the New York Central, it would make a difference to the C. B. & Q. of only \$200,000 out of a total of \$5,000,000.

Mr. HOLDEN: Both burning the same kind of coal and getting the same results?

Mr. McVANN: I couldn't say.

Mr. HOLDEN: You don't know whether the coal burned by the two lines run an engine the same number of miles, and will haul the same number of tons or not, do you?

Mr. McVANN: The statement also shows the gross merchandise tonnage of some of the railroads shown by their annual reports to the Commission. Some of these railroads do not show separately their tonnage of merchandise, and I could not say that I used that for all those for whom I averaged the fuel account. The gross merchandise tonnage of the railroads is much less than 10 per cent on their total freight tonnage. Some of these railroads make a classified statement to the Commission in their annual reports, 1603 classifying their tonnage on the basis of products of mines, products of agriculture and so forth, and they have a heading under merchandise which includes most articles ordinarily carried in the first, second, third or fourth classes. On the New York Central Railroad that merchandise is 11.24 per cent of its total tonnage. On the Lake Shore it is 6.2; on the Pennsylvania, 5.74; on the Chicago, Milwaukee & St. Paul, it is 8.85 per cent, and on the Chicago, St. Paul, Minneapolis & Omaha 6.89 per cent. of the total tonnage. Assuming that the merchandise figures of the merchandise tonnage as shown in these annual reports covers substantially the business of these complainants, the amount of the gross fuel account assigned to that percentage of the total business would make a difference of less than \$20,000 in the fuel account for hauling merchandise. The table shows this was—on page 2 is shown the average freight receipts per ton per mile for 1906 between the eastern and western roads. The figures are as follows: The Lake Shore 5 mills, New York Central 6-25/100 mills, Pennsylvania 5-88/100 mills, Pan Handle Road 6-35/100 mills, the Wisconsin Central 6-61/100 mills, Chicago & Alton 6-39/100, C. B. & Q. 1604 8-4/100, C. B. & N. 6-63/100, the C. St. P. M. O. 9-31/100, Chicago, Milwaukee & St. Paul 8-62/100, Chicago, Rock Island & Pacific 9-30/100, C. & N. W. 8-88/100 mills per ton per

mile. I took the standard railroads in each case east and west of Chicago. The roads west of Chicago earned more per ton per mile than the roads east of Chicago. The average revenue per ton per mile on the five eastern roads was 6-1/10 mills, and the average freight receipts per ton per mile on the six last named roads was 8-46/100 mills. Reduced to percentage, the earnings per ton per mile of the last six roads is greater than the first six roads. The average revenue per ton per mile of the five eastern roads, New York Central, Lake Shore & Michigan Southern, Pennsylvania, Panhandle and P. C. C. & St. L. is 5-93/100 mills. The average revenue per ton per mile of the five railroads in the West, the Chicago & Northwestern, Chicago, Burlington & Quincy, Chicago, Milwaukee & St. Paul, Chicago Great Western and Chicago & Alton is 7-76/100 mills. The average of the five western roads is 31 per cent greater than the average revenue per ton per mile of the five eastern roads.

On page 3 is a comparison of the percentage of operating expenses, showing their relation to the earnings of the same year. The operating expenses include the four items of maintenance of way and structure, maintenance of equipment, conducting transportation and general expenses. The percentage on the New York Central was 71.34 per cent of their gross earnings. The difference between the gross earnings and the operating expenses was 28.66 per cent. The Panhandle percentage of operating expenses to earnings, which is ordinarily known as operating ratio was 71.3 per cent. The Alton operating ratio 67.51, the Lake Shore 62.94, the Wisconsin Central 69.32, the C. B. & Q. 67.4, the C. St. P. M. & O. 60.75, the Chicago, Rock Island and Pacific 69.92, and the Chicago & Northwestern 62.84. It will be seen that railroads west of Chicago are operated at a less per cent of gross income than are the roads east of Chicago, which means that under present railroad rates the roads west of Chicago have a higher per cent of profit over operating expenses than do the roads east of Chicago. On page 4 of this exhibit is a table of surplus earnings as shown by the statements of these roads June 30, 1903, showing the New York

Central \$15,000,000 in round numbers, the Lake Shore & Michigan Southern \$17,000,000, the Panhandle \$5,000,000, the Pennsylvania Company \$24,500,000. In the west the earnings of the C. B. & Q. were \$41,600,000, of the Rock Island \$15,300,000, of the Chicago, Northwestern \$13,900,000—this being a term of years ending June 30, 1903—and for the C. M. & St. P. Railway Company for the year 1903 only \$5,800,000. From their annual reports published, the statement is made showing that their total surplus earnings at that time were \$25,000,000, but I do not give that figure on authority, but only from the reports.

Mr. ELLIS: That is the surplus earnings for the entire period of how many years?

Mr. McVANN: It is the total surplus shown by their balance sheet on June 30, 1903.

Mr. ELLIS: For all time?

Mr. McVANN: For all time. By these tables you can see that the western roads earn more per ton per mile on freight traffic than do

the eastern roads by 36 per cent. The revenue per ton per mile on the western roads is 31 per cent greater than on the eastern roads, and the western roads are operated at a less per cent of the gross income than are the eastern roads, and the western roads have 1607 a much larger surplus in earnings than do the eastern roads.

Mr. WEBSTER: Are the figures in that exhibit correct?

Mr. McVANN: They are taken from the annual reports of the railroads, and are correct copies of those so far as I could say, except that one item of the \$25,000,000 of the St. Paul road which I mentioned a minute ago.

Mr. WEBSTER: We offer said exhibit in evidence.

Commissioner CLARK: The exhibit will be received subject to checking and correction by the defendants.

Said exhibit was marked as Complainants' Exhibit No. 6, and is transmitted herewith.

Mr. WEBSTER: I call your attention to another exhibit about which I am not going to ask you to go into any detail. I will say to the Commissioners that this is a table showing the local rates or the rate from New York to Omaha, and New York to St. Louis, and then the rates to the various towns which are set down in that large map already in evidence, some of which tables have already been transcribed into one of the exhibits which is in evidence, but

1608 this happens to be a more detailed statement of the rates by the different classes, first, second, third, fourth and fifth. I do not think it is worth while to undertake to read it. I simply want to ask if it is correct, and have it go in evidence to support the tables. Mr. McVann, did you cause to be prepared or prepare yourself, the exhibit now in your hands?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: Showing the rates New York to Omaha, and St. Louis and St. Paul and so on to the various towns named in this exhibit?

Mr. McVANN: Yes, sir.

Mr. WEBSTER: What do you say as to its correctness?

Mr. McVANN: They are correct copies of the rates shown in the tariff, references to which are on each page.

Mr. WEBSTER: We offer this exhibit in evidence.

Commissioner CLARK: It may be received subject to checking and correction by the defendants.

Said exhibit was marked as Complainants' Exhibit No. 7, and is transmitted herewith.

Mr. WEBSTER: Have you made an examination and prepared a series of tables showing the rates from Chicago to the Missouri River on dry goods and other merchandise from January 9, 1888 1609 down to July 1, 1894, and some down as far as 1896 and 1902 as the case may be?

Mr. McVANN: Yes, sir; I made such an examination.

Mr. WEBSTER: What do you say as to whether or not the rates from the last item set down in each exhibit continued to be the rate up to the present time?

Mr. McVANN: Where that fact is noted in connection with the table, that is the fact. Where that notation is made in connection with the table, that is the fact.

Mr. WEBSTER: You may state as the result of your examination of these rates, what the fact is as to whether or not there has been a reduction or increase in the rates on merchandise between January 9, 1888 and the present time?

Mr. PEIRCE: Between what points are the rates?

Mr. WEBSTER: From Chicago to Missouri River points.

Mr. McVANN: The rates shown for the present time on practically all of these items, are higher today than they were, for example, on dry goods in 1888, when it was 75 cents, while today it is 80 cents from Chicago to the Missouri River. On cotton piece goods in 1888, the rate was 45 cents, while today it is 50 cents from Chicago to the Missouri River. The rate from the Mississippi River to the Missouri River was 30 cents in 1888 on cotton piece goods, and is 35 cents at the present time. Dry goods bats and sheets from the Mississippi River to Missouri River in 1888 was 55 cents, and at the present time is 60 cents. The first class rate in 1878 was 85 cents, in 1887 it was 90 cents, in 1890 it was 75 cents, and in 1895 was 80 cents. The rate on dry goods and medicines in 1890 was 75 cents, and at the present time is 80 cents. The rate from New York to the Mississippi River has been since August 15, 1888, to the present date the same. Cotton piece goods have been changed from 58 cents to 75 cents, and back to 64 cents, whereas the rate from New York to the Pacific Coast, transcontinental rate on dry goods, March, 1888, was \$4.00 a hundred, dropped down to \$2.60 on June 25, 1898, and has remained unchanged to date. The rate on dry goods from Chicago to the Pacific Coast terminus in 1888 was \$3.25 and on June 25, 1898 got down to \$2.60, and remains the same today.

Mr. WEBSTER: Are the figures set down in that exhibit correct?

Mr. McVANN: They are taken from a document published by the Interstate Commerce Commission called "Forty years review of railway freight rates", and on each table is a direct reference to the tables in that publication from which they are taken, and I think they are correct in every respect.

Mr. WEBSTER: We offer that in evidence.

Commissioner CLARK: It may be received as the other exhibits have been received.

Said statement was marked as Complainants' Exhibit No. 8, and is transmitted herewith.

Mr. McVANN: The date of that publication brings the rate down to 1902, and in each case I have examined the tariff in between 1902 and 1907 in the files of the Commission to bring that history down to date, so my notation that the rates remain the same today is based on the tariffs on file in the Commission as a general rule.

Mr. WEBSTER: From your experience as a freight man and railroad man, have you any knowledge as to the custom whether or not there has been during the same period of time a reduction in the

actual cost of transportation, and if so, you may state wherein that reduction has been brought about?

1612 Mr. McVANN: There is no question, I think, that there has been a material reduction in the cost of transportation of all articles of freight during the period from 1888 to the present time. That all comes within my own observation generally, and I recall a number of items that contributed to that reduction in cost—betterment of roadways, elimination of grades, doubling tracks of certain railroads, increase in the capacity of cars, and a great many of these things that all tend to reduce the cost per ton of handling freight.

Mr. WEBSTER: Has it reduced the number of the train crew necessary to handle the same amount of tonnage?

Mr. McVANN: So far as my observation goes, I do not think it has made any particular change in the size of the train crews.

Mr. WEBSTER: One train crew can handle more cars and greater tonnage than formerly?

Mr. McVANN: Yes, on account of the general application of the air brakes to freight trains, and so forth. Larger trains can be handled by the same crew with safety than could be done
1613 25 years ago, of course.

Mr. WEBSTER: Under certain of the answers which are filed here, the fact that some of these complainants are jobbers or shippers is perhaps denied under information and belief. Certain of the complainants represent themselves in the pleadings to be corporations, and others as co-partners, and in some of the answers there seems to be a denial upon information or belief, while others demand proof. I assume nobody desires me to offer proof on that, do they?

Mr. PEIRCE: We waive that.

Mr. WEBSTER: Then we have nothing further to ask this witness.

Mr. HOLDEN: In view of the large amount of documentary evidence, we would like to defer the cross-examination of this witness until morning, if the Commission please.

Commissioner CLARK: We will take a recess until tomorrow morning at 10:00 o'clock.

Thereupon, at 4:30 o'clock P. M., the Commission took a recess until 10:00 tomorrow, Friday morning, November 22nd, 1907.

1614

KANSAS CITY, MISSOURI, November 22, 1907.

At 10:00 o'clock A. M. the Commission met pursuant to adjournment, and the hearing proceeded as follows, the parties all being present as on yesterday.

E. J. McVANN, recalled for further examination, having been previously sworn, testified as follows:

Cross-examination (continued).

Mr. LYNDE: May it please the Commission, I first had an opportunity to examine these statements which were offered in evidence by the complainant last evening after the adjournment. It was im-

possible for me to make any examination of them before that time, and I find that without an exception they are both statements and arguments, half and half, largely made up of statements and largely made up of arguments. So far as they are statements, I think that they are properly admissible in evidence, but as arguments, they are not. I do not wish for my part to appear as conceding
1615 on the record that those are competent matters of evidence in this case. I want now to make an objection to the admissibility of those statements in so far as they go outside of statements of anything like facts, and in so far as they purport to be matters of argument on the part of the witness, or the gentleman who prepared them.

Commissioner CLARK: The objection will be sustained. They will be admitted as evidence only so far as they present facts.

Mr. LYNDE: Then I desire to suggest that as to each of these statements the matters of argument can be cut out. I think it is not impossible at all to just cut out the arguments of the gentleman who prepared the statement, and let them go in as confined only to the statements. I would ask that they be corrected in that way. You will find by examination of the various statements that the witness first lists a table and then below he goes on with an argument as to what they may show. My point is that being admitted as tables the matters of argument ought to be cut out of them.

Commissioner HARLAN: You mean physically cut out?

1616 Mr. LYNDE: Yes, sir.

Commissioner HARLAN: Wouldn't it be satisfactory to have your objection appear upon the record and have the record show that the argumentative portions of those exhibits are stricken from the record? I assume they will appear in the argument presented in the printed briefs at any rate.

Mr. LYNDE: Very well. It could so readily be done that I thought it would be perhaps as satisfactory to have them simply cut right out of the case.

Commissioner CLARK: They would reproduce those arguments again in their briefs so it would not lose the effect of it if it had any effect.

Mr. LYNDE: Very well.

Commissioner CLARK: You may now proceed with your cross-examination of Mr. McVann.

Mr. LYNDE: Your railroad experience covering a period of how many years of actual experience began when?

Mr. McVANN: From 1885 to 1902.

Mr. LYNDE: And during that time you were acting in what capacity?

1617 Mr. McVANN: I was for two years a clerk, sort of rate clerk and stenographer in the general freight office of the B. C. R. & N. Railroad.

Mr. LYNDE: At Cedar Rapids?

Mr. McVANN: At Cedar Rapids. In 1887 I went with the Pennsylvania in their Star Union office as an agent.

Mr. LYNDE: At a point or as solicitor?

Mr. McVANN: As the agent—soliciting agent, I presume you would call it.

Mr. LYNDE: Did that mean you traveled about in the territory?

Mr. McVANN: Yes, sir. I traveled throughout Nebraska during the first three years of that employment, and through Iowa, Minnesota and South Dakota during the remaining twelve years or thereabouts.

Mr. LYNDE: Soliciting freight for Pennsylvania Lines, as I understood you?

Mr. McVANN: Yes, sir; that was my principal business.

Mr. LYNDE: That lasted until when?

Mr. McVANN: Until 1902, January 31, 1902.

Mr. LYNDE: And then you practically ceased your railroad connections, as I understand?

Mr. McVANN: I practically ceased my employment by railroads; yes, sir.

1618 Mr. LYNDE: That is what I meant.

Mr. McVANN: Yes, sir; that is the fact.

Mr. LYNDE: I do not recall just how these statements of yours are listed by numbers, but I will take them up as I have them here before me. I have here a statement which you prepared showing railroad rates on dry goods, cotton piece goods, boots and shoes, and articles chiefly dealt in by the complainants, have been increased instead of diminished during the last 19 years, and so forth. You recall that statement, do you?

Mr. McVANN: Yes, sir; I recall that statement.

Mr. LYNDE: I note that you list in that statement in rates to St. Paul particularly, from Chicago, a very low rate that prevailed on May 10, 1894. Do you recall that low rate?

Mr. McVANN: I do not recall it from memory; no, sir.

Mr. LYNDE: It prevailed there apparently for a period of 20 days. Do you remember anything about the facts in connection with that?

Mr. McVANN: No, I do not.

Mr. LYNDE: You know nothing in the matter except as to what you obtained from tariffs that you found on file? Is not
1619 that the fact?

Mr. McVANN: As to that tabulation?

Mr. LYNDE: Yes, sir.

Mr. McVANN: Well, I could not say off hand that that was a fact, no.

Mr. LYNDE: Well, as to these particular rates I am referring to?

Mr. McVANN: As to the particular rates which you just now referred to, I do not now recall anything at this moment.

Mr. LYNDE: You have no knowledge as to the conditions existing at the time that led up to the putting in effect of the very low rates that are referred to as shown in your list, have you?

Mr. McVANN: Not that I recall at this moment.

Mr. LYNDE: Well, you commenced with the statement of rates as far back as November 15, 1887. I assume from what you said as to your railroad employment that that did not commence until some time after that date?

Mr. McVANN: My railroad employment commenced on the first day of July, 1885.

1620 Mr. LYNDE: Pardon me. Did you at that time have any knowledge and facts as to the conditions that led to the making of these rates, the early rates shown in your list?

Mr. McVANN: Why, yes, I had knowledge in a general way of the making of rates at that time naturally.

Mr. LYNDE: Now let us see, you were engaged locally altogether, were you not, in your business at that time? Your work was local work?

Mr. McVANN: In 1885?

Mr. LYNDE: Yes, sir. You were a clerk in the office?

Mr. McVANN: There were two men in the office of whom I was one, who made all the rates and tariff of the B. C. R. & N. railroad at that time?

Mr. LYNDE: Do you mean to say that you made them, or that you simply listed them?

Mr. McVANN: I referred to the physical work. I do not mean that we made the rates in that we actually fixed the figures.

Mr. LYNDE: When you say you made the rate, you imply that you actually made the rate?

1621 Mr. McVANN: I was not the rate making power at all, no, sir.

Mr. LYNDE: What you did was to tabulate what somebody else told you to do in that regard? You were acting as clerk in the matter at that time as a matter of fact?

Mr. McVANN: Yes, that is true.

Mr. LYNDE: In order to obtain the full course and significance of your statement, it will be necessary in fact to investigate into the actual conditions which led to the making of each one of these rates which you have listed here? Is not that true?

Mr. McVANN: I would not admit that; no, sir.

Mr. LYNDE: Why not?

Mr. McVANN: I take it that the facts show for themselves.

Mr. LYNDE: In other words, you take it that independently of conditions and without regard to conditions as they may have existed at the time, a rate is put into effect, the fact shows you say for itself?

Mr. McVANN: The fact that the rate is put into effect shows for itself, and what the rate is. That is all.

Mr. LYNDE: That is all?

Mr. McVANN: Yes, sir; that is all.

1622 Mr. LYNDE: But you do not remember, and cannot state as to the special conditions existing at the time these particular rates that are referred to were put in effect? That is true, as I think you have already stated?

Mr. McVANN: Yes.

Commissioner HARLAN: The rate you refer to is found in exhibit No. 8?

Mr. LYNDE: I did not have the record, and I am glad you suggested the exhibit number. I merely have the copy which was fur-

nished to me by Mr. Webster yesterday. I refer to that simply as an illustration, that is all. Now Mr. McVann, I will refer to the exhibit that you prepared, which shows tables of freight rates from New York to western points, and cities which you entitled in this manner: "Showing the jobbers in Omaha, St. Joseph and Kansas City are in a pocket or disadvantage and that more favorable rates are given to their competitors in St. Louis, St. Paul and Minneapolis." I haven't the Exhibit numbers.

Mr. McVANN: It is Exhibit No. 7.

Mr. LYNDE: I notice that you have made comparisons there very largely between rates from New York to Omaha on the one hand, and rates from New York to St. Louis. That is a fact, is 1623 it not?

Mr. McVANN: I made the comparisons from New York to Omaha, New York to St. Louis, and New York to St. Paul.

Mr. LYNDE: Just answer my question. I say you have made that comparison very largely between Omaha and St. Louis in this exhibit?

Mr. McVANN: No, sir; that is not any more than to make it typical.

Mr. LYNDE: I did not ask that question. I asked whether in this exhibit you have not made that a comparison very largely between New York and Omaha on the one hand, and New York and St. Louis on the other?

Mr. McVANN: I do not care to give you a reply stating that I have made it very largely.

Mr. LYNDE: Kindly give me a reply to the question. Here is your exhibit before you. Will you state it? I want to save myself and you the trouble, but in view of the fact that you will not give me the answer, I will ask you to just go over that and state the number of St. Louis rates you have stated here.

Mr. McVANN: Very well. You want the number of rates or the number of points on which those rates were made?

1624 Mr. LYNDE: Go ahead and figure up the number of rates.

Mr. McVANN: very well. (Witness examines exhibit.)

Mr. LYNDE: How many do you make it?

Mr. McVANN: I make it that the St. Louis rates to and from St. Louis on each one of 33 tables.

Mr. LYNDE: I must have made an error. I made it 44 St. Louis and 4 St. Paul. How many pages do you make in all in your exhibit?

Commissioner CLARK: He did not say they were used 33 times. He says he has quoted the St. Louis rate in each of the 33 pages.

Mr. LYNDE: That is the point. I figured it very hastily, but he has 44 times stated the rate to St. Louis and from St. Louis to some point in contract with the rate to Omaha or Kansas City. I do not care which way it is, 33 or 44, but the fact is, is it not, that you have stated four cases as to St. Paul, and either 33 or more cases as to St. Louis in this Exhibit 7?

Mr. McVANN: That would seem to be so; yes, sir.

Mr. LYNDE: Suppose Mr. McVann, that when you undertook

your duty in this case, which was, let me ask you, was it not, to prepare the tables, you considered this matter from the point of
1625 view of an expert?

Mr. McVANN: The point of view of a tariff man.

Mr. LYNDE: When you did that, you had the complaint before you?

Mr. McVANN: I had read it; yes, sir.

Mr. LYNDE: Did you observe at that time that St. Louis is not mentioned in that complaint? Did that occur to you?

Mr. McVANN: I do not really recall.

Mr. LYNDE: But as a matter of fact, when you prepared your exhibit No. 7, in order to show that Kansas City, St. Joe and Omaha were in a pocket, you took the rates from St. Louis as your means of demonstrating that proposition in 33 or 44 or whatever it may be, out of 37 or 47 cases?

Mr. McVANN: As a matter of fact I made these——

Mr. LYNDE (interrupting): Just answer that question, please. I am not asking anything else. You can answer that yes or no. You did do that, or you did not. Which was it—I don't care why.

Mr. McVANN: I cannot answer your question yes or no, and answer it truthfully.

1626 Mr. LYNDE: Very well, do not answer it at all then; that is enough. Referring now again to this exhibit No. 7, take the very first page that you have listed there, which shows a rate from New York to Omaha on the one hand, and Omaha to Falls City and then a rate from New York to St. Louis and from St. Louis to Falls City. Now the fact is that Falls City takes the Missouri River rate, doesn't it?

Mr. McVANN: Falls City takes the same rate as Omaha from St. Louis?

Mr. LYNDE: Yes, sir; and from New York.

Mr. McVANN: It figures out the same as Omaha from New York, because of that fact?

Mr. LYNDE: Because it takes the same rate.

Mr. McVANN: The same rate from St. Louis as Omaha.

Mr. LYNDE: That is true of Sioux City, is it not, from New York?

Mr. McVANN: From New York by way of the upper river crossings, but not by way of St. Louis?

Mr. LYNDE: But by way of the Chicago and upper river crossings?

Mr. McVANN: By way of Chicago and the upper river
1627 crossings; yes, sir.

Mr. LYNDE: In other words, the New York man can reach Falls City on the same basis he reaches Omaha?

Mr. McVANN: Yes, sir; he can.

Mr. LYNDE: So the Falls City man can buy in New York just as well as the Omaha man can?

Mr. McVANN: Yes, sir; he can if he so desires. So far as the freight cost is concerned, he can if he so desires.

Mr. LYNDE: And in Sioux City, the Sioux City man can do the

same thing—that is, he can buy in New York as well as the Omaha man.

Mr. McVANN: If you mean his freight rate from New York is the same as from Omaha, yes.

Mr. LYNDE: I suppose so, and I suppose it is determined also by whether he has the cash or credit. I do not know whether he has or not. We are dealing solely with freight rates, and I think you might venture to assume that. Take Sioux City, for instance, which is a Missouri River point. It is also a large jobbing point, is it not?

Mr. McVANN: Not very large.

Mr. LYNDE: I have heard Sioux City people say it was. I believe Mr. Scott, who is here, would perhaps take another view of that. You have listed there cases in this same exhibit No. 1628 7, to other points on the Missouri River that take the same rate as Omaha and Kansas City?

Mr. McVANN: I recall one.

Mr. LYNDE: I think you will see that you also went on to say, or Mr. Webster did, that there was no error whatever in anything here except some one point—I don't remember what it was, not having the paper before me. I will call your attention to a few of these things that look to me like errors. On page 6 of this same statement I see Aurora, Nebraska. There you give apparently a rate from New York to St. Louis, and from St. Louis to Aurora. State whether that rate from New York to St. Louis, and St. Louis to Aurora, Nebraska, is correctly stated?

Mr. McVANN: No, it is not.

Mr. LYNDE: I thought not myself.

Mr. McVANN: The stenographer in making the total of the New York-St. Louis and St. Louis-Aurora, took the St. Louis-Aurora rate as the total instead of adding the 87 cents. It is apparent, however.

The error is perfectly apparent.

1629 Mr. LYNDE: Very true, but it has to be corrected, and there are several others.

Mr. McVANN: I am sorry to hear that. I made every effort to make the statement correct, and if there are any errors, they no doubt arise from the same cause that that one does, from the inadvertence of the stenographer who copied the figures.

Mr. LYNDE: How about this one at the close, just without running through the entire exhibit. You list a rate on page 38.

Mr. McVANN: Yes, sir.

Mr. LYNDE: New York to Kansas City, and Kansas City to Madison, Wisconsin. Is there any such movement as that?

Mr. McVANN: Page 38 in this statement is Arkansas City, Kansas.

Mr. LYNDE: I have a copy here containing 49 pages, which Mr. Webster furnished me on yesterday for my examination, and this one you have seems to only contain 38 pages.

Mr. WEBSTER: The one you have was my own personal copy, which was not put in evidence.

1630 Mr. LYNDE: You gave it to me for my own use.

Mr. WEBSTER: When I came to prepare the one to go in evidence, I found there were two or three tables I did not care to

put in evidence because I did not think they were of any importance. They were omitted from the copy I put in evidence, but I did not take the pains to tear out of the copy I had on my table these tables, and therefore they are in the copy which I handed to you, that being my own office copy.

Mr. LYNDE: I do not know what is in evidence and what is not from this copy I have. I will have to drop this matter, and look over the original and see what there is in it.

Commissioner CLARK: Have you a duplicate of this copy you filed as evidence?

Mr. WEBSTER: That which I delivered to counsel is a perfect duplicate except it contains these two extra tables in it. Tear those out and it will be a perfect copy.

Mr. LYNDE: There seems to be seven pages to account for. I call your attention to page 38 and Mr. McVann calls attention to the fact that page 38 of the copy he has does not compare at all. How do I know what you have offered?

Mr. WEBSTER: I gave this office copy I worked with to counsel as a matter of accommodation, as I understood it. I do not suppose I will be subject to criticism for endeavoring to accommodate counsel on the other side.

Commissioner CLARK: We think that counsel upon the other side is entitled to a copy of any exhibit that you put in evidence, of this kind, so that they may have an opportunity to investigate it and check against errors that may be in it. We think that you should furnish at a very early date a corrected and completed copy of this exhibit for the Commission and duplicate copies for counsel on the other side, so that they may have opportunity to point out any errors that may appear in connection with it.

Mr. WEBSTER: Do I understand that we are to furnish an extra copy for the Commission, in addition to the one offered in evidence here? I am perfectly willing to do so, of course.

Commissioner CLARK: If you desire to correct this copy, 1632 as it is admitted there are some errors in it, and we do not know how many more may be found if counsel analyses it further, you may do that; or you may prepare a corrected copy for the Commission, or you may leave this on file and furnish counsel an exact copy of this.

Mr. WEBSTER: I thought perhaps from the remark the Commissioner made, that it was desired copies should be furnished one to the reporter, and another to the Commission, in addition to that which goes to the reporter. I do not understand that so now.

Mr. LYNDE: In view of that, I will ask if the Commissioners please, that the witness be permitted to stand aside, and that the cross-examination be suspended and we have an opportunity to examine these later and resume. In view of the fact this hearing goes on in Chicago, and in view of the fact that Mr. McVann is acting as expert for the complainants in this matter, he will be present at Chicago at that hearing, at which time I shall be very glad to resume his cross-examination. It seems to me that is only fair.

Mr. WEBSTER: Personally I have no objection to that method of procedure. I do not like to be placed in the light of being
1633 criticised for endeavoring to accommodate counsel on the other side, however.

Mr. LYNDE: I am not criticising you at all.

Mr. WEBSTER: I shall take pains to tear out these two pages and repage it, and then I will have a perfect copy unless the stenographer in copying some of the figures, has made an accidental mistake, and as to that I am not prepared to say because I did not personally undertake to read over and check the figures in the two papers to see that they are precisely alike, but I assume they are to the extent that the ordinary copyist would make a perfect copy.

Commissioner CLARK: How soon can you furnish the counsel on the other side with a correct copy of this exhibit?

Mr. WEBSTER: In about three minutes. I will tear out these extra pages, and let him have it right now.

(Counsel for complainants arranges the exhibit, and presents a copy thereof to Mr. Lynde.)

Mr. McVANN: You have an exact copy now.

Mr. LYNDE: Very well; refer to page 33.

Mr. McVANN: Madison, Kansas.

1634 Mr. LYNDE: That is page 33 all right, but when I had this before me last night, it read Madison, Wisconsin.

Mr. McVANN: Yes, sir; I just corrected that.

Mr. LYNDE: So you did not intend to institute comparisons as to these Missouri River rates on any movement running to Madison, Wisconsin?

Mr. McVANN: No, sir; I did not.

Mr. LYNDE: That is another. If you will examine the list, Mr. McVann, you will find quite a number of others first and last. I have only had a very short time to discover them, but have found a number. I have a few more here. I see the same correction has been made on page 23, or at least a correction made there. Let us see what that is. I do not know whether you have corrected that now right. I think it was right before.

Mr. McVANN: It was South Sioux City, Iowa, but it should be South Sioux City, Nebraska, and I corrected it. That was the stenographer's error also in copying from my original data.

Mr. LYNDE: How about 22?

Mr. McVANN: That is also the same error. That should be Oakland, Nebraska.

1635 Mr. LYNDE: Are you sure that the rest of it is all right, or have you had a chance to look over it to see?

Mr. McVANN: I am not going to say that the stenographer has copied it absolutely accurately, but I am quite sure that the original compilation was right and that this is a fairly correct copy of it.

Mr. LYNDE: Don't you think, not by way of criticism, that when you produced it, it is only fair to say to the Commission that it should be compared and produced in a correct form?

Mr. McVANN: I assumed that the stenographer compared it. He was instructed to do so.

Mr. LYNDE: Take a look at page 17, Spencer, Iowa. I cannot understand that, but perhaps you can. It reads as follows: "New York to Omaha, \$1.47; Omaha to Spencer, Iowa, \$4.32. Total \$1.90."

Mr. McVANN: Yes, sir; I understand that.

Mr. LYNDE: In the second class it is even worse there. I do not know whether that is \$32.16 or what it is, but waiving that, there is an error of course.

Mr. McVANN: The error in the first class, which you called 1636 my attention to, is due to the transposition of the periods. It should read 42.3 cents.

Mr. LYNDE: Will you let me ask you to check your exhibit, and run it through, and get it correct, so we will know what it is without compelling us to point out the errors that are in it?

Mr. McVANN: Yes, sir.

Mr. LYNDE: That can be done just as well later and not now. Now I have examined with such care as I could in the brief time allowed me the table which you have prepared, showing comparisons of rates as stated on the outside, from Atlantic seaboard by way of Chicago, and by way of St. Louis to Western points, to demonstrate that the amounts received and retained by the railroad lines west of Chicago and Omaha, St. Joseph and Kansas City, are excessive, unjust and discriminatory. That is quite a bulky table. You may have the number of that exhibit also.

Commissioner HARLAN: It is No. 4.

Mr. LYNDE: While I have not been able to examine it with care as it undoubtedly deserves, it seems to be prepared on the basis of a mileage tariff. That is the theory of it, is it not?

1637 Mr. McVANN: Yes, the first compilation here, one and two, is prepared on that basis.

Mr. LYNDE: In a way it is the general theory of the compilation as a whole, is it not?

Mr. McVANN: No.

Mr. LYNDE: The first two pages you say are on that theory?

Mr. McVANN: Yes.

Mr. LYNDE: I understood you to say that?

Mr. McVANN: Yes, sir; the first two pages of rates are computed on the mileage basis for comparison.

Mr. LYNDE: Is it not true in fact of them all that the comparisons are instituted on the mileage basis in each case?

Mr. McVANN: Up to page 4 continued, the rates are computed on a mileage basis—that is, the comparisons are computed taking the actual rates in one case, and extending it on a mileage basis. The comparisons on the succeeding pages after page 4 continued, involving comparison of the divisions of the transcontinental rates and certain other divisions, are on shipments from New York to 1638 the Pacific Coast. That is an actual computation based on the divisions that are made by those roads of those rates.

Mr. LYNDE: Well, that is in fact based, is it not also on mileage?

Mr. McVANN: No, that is based on the actual percentage from

Chicago to Missouri River and from Chicago to Oklahoma City, and from Chicago to Texas common points. These are based on actual divisions accepted and retained by lines from Chicago to Missouri River for performing the service.

Mr. LYNDE: When you get out to Omaha with your rate from the Atlantic seaboard, built up on the basis that you claim, which is the mileage basis, these comparisons, as I take it, are merely comparisons that you have suggested by way of justifying the rates which you claim. You would carry that still further, I assume—that is, out west from Omaha you would still continue the mileage basis? Take Hastings, Nebraska, for instance, or points like that in Nebraska.

Mr. McVANN: I do not recall any computations that I made involving Hastings.

Mr. LYNDE: I know, but I am asking you: You would not stop your mileage tariff at the Missouri River?

1639 Mr. McVANN: I am not making the tariffs.

Mr. LYNDE: I am not asking you to make it, but if you carry on the mileage basis from the seaboard to the Missouri River, which is what you have done in the statement which you have submitted here to the Commission, you would continue that tariff on the same mileage basis from Missouri River west, would you not? Or is there any reason that you can suggest why the mileage system should be dropped in movements west from the Missouri River?

Mr. McVANN: I—

Mr. LYNDE (interrupting): Just answer my question, please.

Mr. McVANN: I cannot answer them unless you permit me to answer it—

Mr. LYNDE (interrupting): No, I want an answer to my question, not to some question that some one else might suggest.

Mr. WEBSTER: It seems to me that when the witness answers, that that question could not be answered by yes or no, and he desires to answer in the form of a statement or explanation, the witness

1640 has a right to make that statement.

Mr. LYNDE: I think he can undoubtedly make that in response to questions put by complainants.

Commissioner CLARK: You were entitled to an answer to your question, and the witness is entitled to a right to explain his answer after he has made it.

Mr. McVANN: I do not wish to be understood as saying that I could not answer the questions.

Mr. LYNDE: I understood Mr. Webster to say you did.

Mr. McVANN: I will answer your question if I can, to this effect: I understand your question to be that if I should make the rate up to the Missouri River on a mileage basis, is there any reason why I should not continue that basis as to the making of rates west of the Missouri River?

Mr. LYNDE: Yes, whether you make them or anybody else. If the rates are built up to the Missouri River on the mileage basis, is there any reason why that basis should stop at that point?

Mr. McVANN: I do not know of a single reason in the world why

1641 that basis, if it were the basis of making all rates, should stop at the Missouri River any more than at Des Moines or at Carroll.

Mr. LYNDE: So that if in fact in this case the Commission should make an order which would be on the basis of the mileage up to the Missouri River, so far as the rates from the seaboard to the Missouri River are concerned, there is no reason why that should stop at the Missouri River? The same basis should be continued west, should it not? Is that not so?

Mr. MCVANN: Not necessarily should be, but it might be and could be.

Mr. LYNDE: Is there any reason why it should not be?

Mr. MCVANN: Not if the Commission judge that that was the proper basis, no, not that I know of.

(Witness excused.)

1642 GEORGE T. BELL, called as a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination:

Mr. ATWOOD: What is your name?

Mr. BELL: George T. Bell.

Mr. ATWOOD: Where do you reside?

Mr. BELL: Kansas City, Missouri.

Mr. ATWOOD: What is your position?

Mr. BELL: Assistant Commissioner of the Kansas City Transportation Bureau.

Mr. ATWOOD: What portion of your life have you given to the study of rates?

Mr. BELL: The last ten years.

Mr. ATWOOD: And the rates I have reference to include of course the freight rates in the schedules or tariffs which are on file with the Interstate Commerce Commission. Are they included in what you have reference to?

Mr. BELL: They are.

Mr. ATWOOD: Are you familiar with the rates between Atlantic tidewater and Chicago and St. Paul?

1643 Mr. BELL: Yes, sir.

Mr. ATWOOD: I think it is agreed that the St. Paul rates are \$1.15 first class?

Mr. BELL: Yes, sir.

Mr. ATWOOD: What is the difference in the per ton per mile rate between east and west of Chicago on that rate?

Mr. BELL: The per ton per mile rate west of Chicago is a little bit more, you might say, than the per ton per mile rate east of Chicago.

Mr. ATWOOD: You mean a fraction of one per cent or several per cent, or what do you mean?

Mr. BELL: A fraction of one per cent.

Mr. ATWOOD: What is the rate from New York to Mississippi

River points on the north, or Dubuque, and on the south to East St. Louis?

Mr. BELL: 87 cents.

Mr. ATWOOD: And the portion between east and west of Chicago lines on that rate?

Mr. BELL: East of Chicago the lines get 72.3 and west 14.7 cents.

Mr. ATWOOD: What is the per ton per mile rate between Chicago and East St. Louis on that ratio or basis?

1644 Mr. BELL: About 1.03 cents, per ton per mile.

Mr. ATWOOD: If you should apply the same rate between the rivers, the Missouri River and the Mississippi River, via the shortest line, what would then be the Chicago-Missouri River rate?

Mr. BELL: About 23 cents.

Mr. ATWOOD: And the present rate is what?

Mr. BELL: 80 cents local.

Mr. ATWOOD: As a part of the proportion of the charge from New York or Boston to Missouri River points?

Mr. BELL: 74.3 cents.

Mr. ATWOOD: And the rate you have just named you say is 23?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Let us assume for a moment, if you will, Mr. Witness, that transportation conditions are such across Missouri as make it proper and feasible to add 20 per cent or one-fifth more to the cost of transportation or the rate charged between the rivers across the State of Missouri, and what would be the rate?

Mr. BELL: Well, the rate from Chicago to Missouri River being approximated on the same per ton per mile basis that applies east of Chicago, being 23.7 cents, and the proportion which the line between Chicago and St. Louis gets being 14.7 cents, and the lines west of the Mississippi River would then get about the difference or 9 cents.

Mr. ATWOOD: And 20 per cent of that?

Mr. BELL: If we should assume the conditions were 20 per cent worse west of the Mississippi River than east of that river, it would be one-fifth of 9 cents, or about 1 4/5 cents—say 2 cents.

Mr. ATWOOD: That would make a total of about 11 cents on the Chicago-Missouri River rates?

Mr. BELL: West of the Mississippi River and east of the Missouri River.

Mr. ATWOOD: With that as your basis, what would be the Chicago-Missouri River rate?

Mr. BELL: About 23 cents, as I said before.

Mr. ATWOOD: And that as a proportional of the through tide-water Missouri River rates—what would the rates then be?

Mr. BELL: Adding the 2 cents to 23, would make it 25, and adding that to the 74, which is a proportion which the eastern line gets to Chicago, would make the through rate about 99 cents.

1646 Mr. ATWOOD: The 14½ cent rate between Chicago and Mississippi River points is the rate that now obtains?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Voluntarily issued?

Mr. BELL: Yes, sir; it is the proportion which the lines east of Chicago get out of the through business.

Mr. ATWOOD: It is a rate voluntarily established by them, as I understand it?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Do you know whether or not it is voluntarily established or only as the result of the imposition on the part of the Interstate Commerce Commission of an order?

Mr. BELL: It is a proportion which the lines voluntarily have established.

Mr. ATWOOD: Are you sufficiently familiar with the topographical and other transportation conditions between the two rivers, to know whether or not an addition of 20 per cent would not be sufficient to make up for any difference there might be between the trans-Missouri transportation conditions and those obtaining between Chicago and Mississippi River points?

Mr. BELL: Just as an observer I would say that the conditions were not substantially different, but my opinion is 20 per cent would be sufficient to add to the rate to cover the conditions west of the Mississippi River, in order to make that equal from a railroad standpoint to those east of the Mississippi River.

Mr. ATWOOD: Taking now the basis of their established per ton per mile rate between Chicago and Mississippi River, add to that the per ton per mile rate, and 20 per cent on the trans-Missouri business, and what do I understand the total Atlantic seaboard-Missouri River rates would be?

Mr. BELL: About 99 cents.

Mr. ATWOOD: As against \$1.45 now obtaining?

Mr. BELL: \$1.47; yes, sir.

Mr. ATWOOD: Are you familiar with the rates between Chicago and El Paso?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Between New York and Kansas City?

Mr. BELL: Yes, sir.

Mr. ATWOOD: What disparity, if any, is there between the distances in these two sets of points?

1648 Mr. BELL: The distance from New York to Kansas City via Chicago is 1370 miles. From Chicago to El Paso via Kansas City is 1407 miles, or practically the same.

Mr. ATWOOD: What is the rate from New York to Kansas City—\$1.47?

Mr. BELL: Yes, sir.

Mr. ATWOOD: What is the rate from Chicago to El Paso?

Mr. BELL: \$1.69.

Mr. ATWOOD: State whether or not it is a fact that in transporting goods from Chicago to El Paso, the lines involved here, the Burlington, Wabash, Rock Island and Chicago & Alton, do a large business between Chicago and El Paso?

Mr. BELL: Up to Kansas City, and the Santa Fe beyond.

Mr. ATWOOD: Goods routed from Chicago to El Paso, would at least in a considerable measure, pass over the very rails of these rail-

roads that transport goods from the Atlantic seaboard to Missouri River points?

Mr. BELL: Exactly.

Mr. ATWOOD: Destined for Missouri River points?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Did I ask you what the rate was from 1649 El Paso to Chicago?

Mr. BELL: Yes, sir; \$1.60.

Mr. ATWOOD: And the difference?

Mr. BELL: 22 cents.

Mr. ATWOOD: Now on that \$1.60 rate, what proportion goes to the Chicago-Missouri River lines?

Mr. BELL: A fraction over 47 cents.

Mr. ATWOOD: As against 74 that they get on the Atlantic seaboard business that they get to Kansas City?

Mr. BELL: Yes, sir.

Mr. ATWOOD: 47 as against 74?

Mr. BELL: Yes, sir.

Mr. ATWOOD: What anomalous situation is there disclosed from the standpoint of rate-making, if you know?

Mr. BELL: As an ordinary proposition, the higher the rate the higher the proportions the lines ought to receive.

Mr. ATWOOD: As I understand you, the distance between New York and Kansas City and Chicago and El Paso being approximately the same, the rate from Chicago to El Paso being higher than from New York to Kansas City, the proportion received by any line would ordinarily be charged larger in the El Paso case than in the

1650 Kansas City case?

Mr. BELL: Yes, sir.

Mr. ATWOOD: But as a matter of fact it is smaller?

Mr. BELL: Yes, sir.

Mr. ATWOOD: What about Texas common points? What is the rate obtaining there?

Mr. BELL: The rate from Chicago to Texas points is \$1.57.

Mr. ATWOOD: Are the rails over which this merchandise will be carried the same whether destined to Texas common points, or Missouri River common points?

Mr. BELL: Practically the same between Chicago and Kansas City.

Mr. ATWOOD: What is the difference between the rates between Chicago, Texas common points, and New York-Kansas City or Missouri River points?

Mr. BELL: The rate from New York to Kansas City is 10 cents less than Chicago-Texas points.

Mr. ATWOOD: How is it apportioned?

Mr. BELL: They get 47 cents from Chicago to Kansas City.

Mr. ATWOOD: As against 74 cents that they get as their 1651 proportion of the Atlantic seaboard-Missouri River rates?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Does the same situation result in that as did from the El Paso situation?

Mr. BELL: Yes, sir.

Mr. ATWOOD: How about Oklahoma?

Mr. BELL: The rate from Chicago to Oklahoma points is \$1.50 on first class.

Mr. ATWOOD: Are the conditions you have just recited with relation to Texas common points true of Oklahoma common points?

Mr. BELL: The proportion to the Kansas City-Chicago line out of that \$1.50 is 48 instead of 47.

Mr. ATWOOD: As against 74?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Their proportion of the Oklahoma rate is one cent greater than the proportion of the Texas common points rate?

Mr. BELL: Yes, sir.

Mr. ATWOOD: And 48 as against 74?

Mr. BELL: Yes, sir.

1652 Mr. ATWOOD: Is that recognized by you as a rate man as an anomalous situation in rate-making?

Mr. BELL: It seems to be, yes, sir; because the through rate is higher, and it is fair to presume that proportions ought to be higher and also in view of the greater tonnage from Atlantic seaboard to Missouri River as compared to that from Chicago to Texas common points and Oklahoma common points.

Mr. ATWOOD: There is a disparity in the volume of tonnage carried west of the Missouri River, and southwest of it, as compared with that which stops at the Missouri River points, is there not?

Mr. BELL: I think that is a matter of common knowledge.

Mr. ATWOOD: Now about transcontinental rates, what is that? \$3.00, I believe, is it not?

Mr. BELL: Yes, sir.

Mr. ATWOOD: The division is how, if you know?

Mr. BELL: On the first class lines on the Chicago and they get their full local of 75 cents.

Mr. ATWOOD: How is that \$2.25 balance divided?

Mr. BELL: 15 per cent and 85 per cent east and west of the Missouri River.

1653 Mr. ATWOOD: How about an arbitrary?

Mr. BELL: On business destined to San Francisco it is 5 cents, taking out the toll, which is added for the terminal line proportion and for practical purposes.—

Mr. ATWOOD (interrupting): Do I understand after deducting this Chicago portion of 75 cents, that from the \$2.25 balance there is deducted an arbitrary of 5 cents?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Then there is given to the east of Chicago and west of the Missouri River lines, 15 per cent of that \$2.20?

Mr. BELL: How was that?

Mr. ATWOOD: There is given to the west of Chicago and east of Missouri River lines, 15 per cent of that \$2.20?

Mr. BELL: Oh, yes, sir.

Mr. ATWOOD: And that leaves what?

Mr. BELL: That makes about 23 cents.

Mr. ATWOOD: In round figures 23 cents?

Mr. BELL: Yes, sir.

Mr. ATWOOD: As against what is now charged for the transportation of goods over these very lines that land goods destined 1654 to the Missouri River points at 74 cents?

Mr. BELL: Yes, sir.

Mr. ATWOOD: Assuming that 33 cents is profitable as the Burlington answer says it is, or assuming it is just compensatory, what would be the profit at 74 cents for the transportation over these lines which is at least compensatory at 33 cents?

Mr. BELL: The difference of 41 cents.

Mr. ATWOOD: And what percentage of profit is that, if you know?

Mr. BELL: About 125 per cent.

Mr. ATWOOD: Now Mr. Bell, the rates suggested and paid for being \$1.10, or 37 cents west of Chicago and east of Missouri River, between Chicago and the Missouri River, if the proportion of the transcontinental rate is remunerative and profitable at 33 cents, at 37 cents I take it 4 cents would certainly be profit?

Mr. BELL: Yes, sir.

Mr. ATWOOD: What percentage of profit would that be—33 cents being the basis, of course?

Mr. BELL: About 12½ per cent.

Mr. ATWOOD: In other words, to be sure I understand 1655 you, assuming that the 33 cents proportion of the transcontinental rate that goes to the lines between Chicago and Missouri River is compensatory, which would be much more if it is profitable, if the rate is established as paid for, that would be making on that at least 12½ cents?

Mr. BELL: 12½ per cent?

Mr. ATWOOD: You have pointed out several instances where on goods destined to points beyond the Mississippi River, the proportion of the rate paid the lines between Chicago and the Missouri River was considerably less than the proportion that goes to these same lines on goods from the Atlantic seaboard to the Missouri River. In how many instances, if you know, or can approximate, is that true?

Mr. BELL: I should say that was true in all instances except where the rates from Chicago to Mississippi River points, except where rates are made on combinations of locals on the Missouri River.

Mr. ATWOOD: Do you mean by that—what do you mean by that?

Mr. BELL: The proportion which goes to the Chicago- 1656 Kansas City business destined west of the river, is their full locals on rates that are made on combination of locals on the Missouri River. For instance, the points directly west of Kansas City and directly west of St. Joe and directly west of Omaha; but on what are known as percentage points in Southern Kansas with reference to Kansas City and Oklahoma and Texas and this outlying territory, their rates are not made on combinations of the locals and therefore the proportions which the Chicago-Kansas City lines get is less than their full locals.

Mr. ATWOOD: What I desire to know, if you can state—I don't know whether you can or not—is whether the situation is similar to this presented by your three or four illustrations with relation to the

proportion of the rate going to Chicago and Missouri River lines, is considerably less than that which goes to that on the Atlantic-Missouri River roads—whether those interests like the four you have given, though differing in degree, are many or few?

Mr. BELL: They are very many.

1657 Cross-examination:

Mr. ELLIS: What is the rate per ton per mile yielded by the portion of the rate east of Chicago?

Mr. BELL: You mean actually figured out?

Mr. ELLIS: Yes.

Mr. BELL: I don't know what it is off hand.

Mr. ELLIS: Figure it out, will you? I want the proportion east of Chicago.

Mr. BELL: It is 1.6 cents per ton per mile.

Mr. ELLIS: Carry it out one figure more.

Mr. BELL: I get it 1.63.

Mr. ELLIS: Well, carry it another figure and see if it doesn't make approximately 1.64?

Mr. BELL: Yes, I get 1.64.

Mr. ELLIS: What does the St. Paul proportion of the through rate from New York yield per ton per mile?

Mr. BELL: The proportion which they get is 40 cents. I said the per ton per mile rate on that business was more than it is east.

Mr. ELLIS: You said it was a proportion of one per cent more west of Chicago than it was east of Chicago? Now compute the rate per ton per mile west of Chicago on that St. Paul business?

Mr. BELL: Before I do that, I will explain why and how I made that answer.

Mr. ELLIS: Why not just make the computation? I want to get it into the record.

Mr. BELL: All right. (Witness figures.) 9.7 mills per ton per mile.

Mr. ELLIS: What mileage do you figure on?

Mr. BELL: 410 miles, which I think is about the short line.

Mr. ELLIS: And the 40 cent rate?

Mr. BELL: Yes, sir.

Mr. ELLIS: Isn't that 1.9 cents instead of 9 mills?

Mr. BELL: No, sir; it is not.

Mr. ELLIS: It is \$8.00 a ton, isn't it?

Mr. BELL: I beg your pardon; I believe you are right.

Mr. ELLIS: If you carry the fraction out, isn't it substantially 2 cents?

Mr. BELL: 1.9 cents.

Mr. ELLIS: What is the next figure?

Mr. BELL: Five.

1659 Mr. ELLIS: 1.95?

Mr. BELL: Yes, sir.

Mr. ELLIS: As against 1.64?

Mr. BELL: Yes, sir.

Mr. ELLIS: Then the difference is .31 of one cent, is it not?

Mr. BELL: About; yes, sir.

Mr. ELLIS: What per cent is .31 of a cent of 1.64 cents?

Mr. BELL: About 19.

Mr. ELLIS: Then west of Chicago the roads get a little over 19 per cent more than they do east of Chicago on the St. Paul, instead of a fraction of one per cent as you testified, do they not?

Mr. BELL: That is the way I testified, yes, sir. I was going to tell you how I arrived at that answer. In the basis of rates which we ask for in our complaint, being \$1.10, that is based upon a mileage rate from New York to Chicago of 75 cents. The distances by short line from Chicago to Kansas City are practically the same as those from Chicago to St. Paul.

Mr. ELLIS: In figuring that distance tariff, New York to 1660 Chicago is on the \$1.10 basis, you used the short line mileage from Chicago to Kansas City, did you not?

Mr. BELL: Yes, sir.

Mr. ELLIS: Now you have testified that the revenue received between the rivers of 14.7 is in your judgment a remunerative revenue?

Mr. BELL: I never testified that at all. I said the proportion which the Chicago St. Louis lines get out of business routed via Chicago to East St. Louis was 14.7 cents.

Mr. ELLIS: And therefore it must be a reasonable revenue for that haul?

Mr. BELL: The rate is always presumed to — compensatory.

Mr. ELLIS: The rate is always presumed to be compensatory for the service performed.

Mr. BELL: Certainly.

Mr. ELLIS: You have made that the basis of your computations as to the reasonableness of other rates, have you not?

Mr. BELL: I have made certain compilations along that line; yes, sir.

1631 Mr. ELLIS: Now that rate which you have used as the basis of your computation applies only to business routed through Missouri River crossings to points beyond, does it not?

Mr. BELL: That applies on business routed via Chicago to East St. Louis, which was formerly a proportional rate, but is to be made a flat rate to St. Louis.

Mr. ELLIS: On the upper crossings it applies only to business going through, does it not?

Mr. BELL: I have not testified——

Mr. ELLIS (interrupting): What is the rate from Chicago to the Mississippi River?

Mr. BELL: The local rate?

Mr. ELLIS: What is the rate from Chicago to the Mississippi River?

Mr. BELL: I am not posted offhand as to what the local rate is.

Mr. ELLIS: Don't you know what the rate is from Chicago to the Mississippi River?

Mr. BELL: Not offhand.

1662 Mr. ELLIS: I was merely surprised at a rate expert that did not know that rate. Is it not 60 cents locally?

Mr. BELL: No, sir, I do not think it is.

Mr. ELLIS: Is it 35?

Mr. BELL: It is very evident somebody else don't know much about it.

Mr. ELLIS: I am asking for information.

Mr. BELL: The rate between the rivers is 60 cents—that is, that does not apply to the Mississippi River.

Mr. ELLIS: Now why should 14.7 cents applying to only a small portion of the business be a reasonable rate as against the rate which applies locally to the business moving between those points?

Mr. BELL: We have made these comparisons on business which comes from Atlantic seaboard on the very same kind of business which creates that rate of 14.7 cents on other business. We do not say the compilations which we make are reasonable local rates at all.

Mr. ELLIS: When you get to the building up of your rate to the Missouri River points, you have used for business terminating at the Missouri River the proportion of rates going beyond as the basis of your reasonable rates, have you not?

1663 Mr. BELL: That 87 cent rate is to apply on flat business to St. Louis. If it does not now, it will in the very near future.

Mr. ELLIS: What rates do you use as the basis of your idea of a reasonable rate? What rates between the rivers do you use? Don't you use the properties of the through rates on business going beyond?

Mr. BELL: I don't quite catch the point of your question.

Mr. ELLIS: Now do you arrive at 9 cents as a reasonable rate between the rivers?

Mr. BELL: I did not say 9 cents was a reasonable rate between the rivers.

Mr. ELLIS: What was the 9 cent figure that you gave out?

Mr. BELL: I said this, that the proportions which the Chicago-St. Louis roads got on New York business to St. Louis was 14.7. If that same per ton per mile basis was used from Chicago to Kansas City, they would get about 24 cents or 23.7 to be exact. Now if the lines between Chicago and the Mississippi River are allowed the same proportion, the lines west of the river would get the difference, or 9 cents.

1664 Mr. ELLIS: How do you build up your 26 cent rate from Chicago to the Missouri River?

Mr. BELL: I have just explained how I built it up. I used the same per ton per mile basis between Chicago and Kansas City as is now used between Chicago and St. Louis, because several of the lines traversed the same territory.

Mr. ELLIS: On the lowest business that moves in that class?

Mr. BELL: On the first class business.

Mr. ELLIS: On the lowest rate that obtains in that class?

Mr. BELL: Yes, sir.

Mr. ELLIS: And that rate applying only to a limited amount of business?

Mr. BELL: I have used the short line from Chicago to St. Louis, and Chicago to Kansas City.

Mr. ELLIS: But you have taken a rate which applies to a limited amount of business?

Mr. BELL: I have taken the rate which applies to a good deal of business.

Mr. ELLIS: It is limited?

1665 Mr. BELL: No, sir, it is not.

Mr. ELLIS: Is it not limited to business coming from the seaboard?

Mr. BELL: It is limited to business coming from New York to St. Louis via Chicago.

Mr. ELLIS: It is not an open rate on all business?

Mr. BELL: No, it is not a local rate; neither would this 23 cent rate be a local rate.

Mr. ELLIS: You have stated a difference of 41 cents in the rate would make a difference of 125 per cent in the profit, did you not?

Mr. BELL: I just predicated my answer on the question asked me.

Mr. ELLIS: How do you arrive at what the profit is?

Mr. BELL: The question which was asked me assumed that the 33 cent rate was compensatory, and if on that same business originating at the Atlantic seaboard and destined to Kansas City they got 74, and this 33 represents the operating expense which the railroad always put up that it does, the difference would be a profit on the question asked me.

Mr. ELLIS: And if that is what it costs?

1666 Mr. BELL: A portion is always presumed to be compensatory.

Mr. LYNDE: Mr. Bell, did you ever work for a railroad in any capacity?

Mr. BELL: I have been in the railroad business for the last ten years.

Mr. LYNDE: In what capacity?

Mr. BELL: Representing shippers.

Mr. LYNDE: Do you call that the railroad business?

Mr. BELL: In connection with the railroad business.

Mr. LYNDE: In what way? You know what I mean when I say railroad business.

Mr. BELL: I never worked for a railroad company.

Mr. LYNDE: You have been assistant to someone else, haven't you?

Mr. BELL: Yes, sir;

Mr. LYNDE: You are a clerk in his office?

Mr. BELL: No, sir.

Mr. LYNDE: Are you the head, or he?

Mr. BELL: We are both employed by the same committee.

Mr. LYNDE: I understand that, but is there a distinction between you and him? Does he control or do you?

1667 Mr. BELL: He is the Commissioner, and I am Assistant Commissioner.

Mr. LYNDE: He generally controls then, doesn't he? You act as he directs? Isn't that about the size of it?

Mr. BELL: In certain cases, yes, sir; not in this case, however.

Mr. LYNDE: Now if you go on and carry out your mileage rate from seaboard to Kansas City, there is no reason why it should stop here, is there?

Mr. BELL: There are a great many reasons why it should.

Mr. LYNDE: Why shouldn't it go to Wichita?

Mr. BELL: Because we do not admit that the conditions west of the Missouri River are the same as east of the Missouri River.

Mr. LYNDE: You want a mileage rate from the seaboard to Kansas City, but you do not want it to go further, do you?

Mr. BELL: We say——

Mr. LYNDE (interrupting): Just answer that question. Do you want it to go any further?

Mr. ATWOOD: We submit that what he wants——

Mr. LYNDE (interrupting): I am asking the witness a 1668 question and I want an answer.

Commissioner CLARK: The witness may answer the question. He has qualified as an expert.

Mr. LYNDE: Answer the question.

Mr. BELL: I appreciate the fact that it might not be well to have it go further under the present conditions.

Mr. LYNDE: What you mean, if I understand you correctly, is that the Kansas City interests are perfectly willing to have a mileage rate up to Kansas City, but they do not care to have it go any further? They do not want the other fellows to have it?

Mr. BELL: If the other fellow will bring suit and make his case, that is none of our concern.

Mr. LYNDE: That is the fact just as I have put it, is it not, whether it is any of your concern or not? You do not want that rate to go beyond Kansas City?

Mr. BELL: We do not want it for the same reason St. Louis don't want us to get this.

Mr. LYNDE: That is it exactly. I have asked all I care to.

Mr. PEIRCE: I want to ask one question about that 14 cent proportion from St. Louis to Chicago you spoke of. Explain 1669 to the Commission why it is the road takes 14 cents as its proportion of the earnings on shipments from Atlantic seaboard to St. Louis by way of Chicago—that is the lines between Chicago and St. Louis?

Mr. BELL: I presume it is on account of the competition of the direct lines.

Mr. PEIRCE: That is not the local rate, is it?

Mr. BELL: No, sir.

Mr. PEIRCE: Then if the line from Chicago to St. Louis did not accept that, it would not get any of the business, would it?

Mr. BELL: No, they would not get any of the business.

Mr. PEIRCE: So, that in order to participate in the business at all, it is absolutely forced upon them, isn't it?

Mr. BELL: No, not necessarily.

Mr. PEIRCE: The Pennsylvania would take it direct to St. Louis, wouldn't they?

Mr. BELL: Because the lines east of Chicago sacrifice a little of their local revenue and give it to the C. & A.

Mr. LYNDE: They do not sacrifice any, do they?

1670 Mr. BELL: Yes, they do. The local from New York to Chicago is 75 cents.

Mr. PEIRCE: They do not sacrifice much of it?

Mr. BELL: No, not very much.

Mr. PEIRCE: They want to participate too, don't they?

Mr. BELL: Oh, yes.

Mr. PEIRCE: Now isn't that a similar condition that led to the establishment of that low rate which you speak of west of Chicago applying on through business—suppose the lines west of Chicago do not participate in that California business on that rate?

Mr. BELL: I know that, Mr. Peirce. The proportion is presumed to be compensatory.

Mr. PEIRCE: I am not asking that. I am asking if that was not the reason that the rate was established?

Mr. BELL: I think it was. I think the Commission has so held; yes, sir.

Mr. PEIRCE: I am not asking what the Commission held. I am asking if that is not the fact?

Mr. BELL: They have found it to be, so I suppose it is the fact.

Witness excused.

1671 J. D. DAVISON, called as a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination.

Mr. ATWOOD: What is your name?

Mr. DAVISON: J. D. Davison.

Mr. ATWOOD: Where do you reside?

Mr. DAVISON: Kansas City, Missouri.

Mr. ATWOOD: What is your business?

Mr. DAVISON: Wholesale dry goods.

Mr. ATWOOD: With what establishment are you connected?

Mr. DAVISON: The Burnham, Hanna, Munger Dry Goods Company.

Mr. ATWOOD: How many years have you been engaged in that business?

Mr. DAVISON: About 18 years.

Mr. ATWOOD: Are you reasonably familiar with the commercial conditions throughout this western country?

Mr. DAVISON: Some of them.

Mr. ATWOOD: Particularly that pertaining to your own branch of the business?

1672 Mr. DAVISON: Yes, sir.

Mr. ATWOOD: Speaking of your establishment as a jobbing house, as contradistinguished from its manufacturing end, what territory do you cover?

Mr. DAVISON: Well, we cover all of western and southwestern and northwestern territory practically.

Mr. ATWOOD: What jobbing cities do you come in contact and competition with?

Mr. DAVISON: St. Louis and Chicago.

Mr. ATWOOD: And St. Paul?

Mr. DAVISON: Well, we do not recognize them much as competition. We come in contact with them however in the northwest.

Mr. ATWOOD: What part of the northwest?

Mr. DAVISON: Montana, Idaho, Oregon.

Mr. ATWOOD: What territory, if you know, is covered by those who attempt to do a jobbing business at all? I have in mind this thought: I recognize that some lines of business extend much further than others and have been seeking in a more general way than that which your answer has pertained to. What I want you to do is to state what the territory is that might be called the Kansas 1673 City territory, if you know?

Mr. DAVISON: Well, with some jobbing lines at Kansas City, I do not think they go further northwest than Oklahoma and Indian Territory, nor further west than Colorado, nor further north than Nebraska. I can speak more definitely about our own house though.

Mr. ATWOOD: In a general way would it be fair to say western Missouri, Kansas, Oklahoma, Northern Texas, parts of Colorado and parts of Nebraska would be fairly descriptive of what might be termed Kansas City territory?

Mr. DAVISON: I think so, yes.

Mr. ATWOOD: State whether or not there has been an advance in the volume of business and population in this vicinity?

Mr. DAVISON: There has been a very marked increase in both population and volume of business.

Mr. ATWOOD: State if you know whether or not the increase of the dimensions of the cars and the power of engines have diminished the number of men requisite to handle the same number of cars in conjunction also with air brakes and other appliances?

Mr. DAVISON: I cannot answer that from my own knowledge. 1674 edge. My impression is——

Mr. HOLDEN (interrupting): Obviously that is a question a gentleman in this line of business could not answer.

Commissioner CLARK: I would like to ask you to explain to the Commission what the effect on your business is expected to be if the Commission grants the pray of this complaint?

Mr. DAVISON: In other words, as I understand your question, why are we bringing this complaint and praying for this relief?

Commissioner CLARK: I asked what you expect to result from it if you get it?

Mr. DAVISON: We will get more returns for our labor and the capital invested.

Commissioner CLARK: How will that result be reached? How will that effect come to you?

Mr. DAVISON: At the present time we are not complaining of the handicap of the natural distance between St. Louis and Kansas City,

but because we have to pay a greater proportion per ton per mile for our freight. If our freight rate between the two rivers was based on the same basis, the difference in freight caused by the distance we would be willing to stand. As it is, we are suffering the extent of the difference. We get less in revenue because of the freight charges we pay on the business we do per million dollars than they do in St. Louis.

Commissioner CLARK: Then is the expectation of the complainants, if this prayer is granted, measured by the difference in the amount of money you pay for freight charges on your present business?

Mr. DAVISON: Yes, sir. That is the way I look at it.

Commissioner CLARK: You do not take into consideration then any prospective or expected expansion of the territory in which you do business?

Mr. DAVISON: I do not think we can reach out further because we are covering about all the territory there is, from the Missouri River to the Pacific Ocean, and from the Canadian Line to the Gulf.

Commissioner CLARK: Would the granting of this prayer have any effect upon the selling price of your goods?

Mr. DAVISON: No, sir. We are meeting competition and pocketing the difference.

1676 Cross-examination:

Mr. LYNDE: What are the particular lines that you sell in this general territory?

Mr. DAVISON: Dry goods.

Mr. LYNDE: General dry goods?

Mr. DAVISON: General dry goods, yes, sir.

Mr. LYNDE: Any specialties particularly?

Mr. DAVISON: I do not know what you have reference to. All dry goods houses have specialties.

Mr. LYNDE: I am not familiar with the dry goods business, and I am asking whether—

Mr. DAVISON (Interrupting): We sell everything that is sold by dry goods houses in Chicago, St. Louis, St. Joseph and Omaha. In addition to that, I do not know but what it might answer your question to say we conduct quite a large factory and manufacture a large line of factory goods. We make a specialty of them, but that is the only specialty I know of.

Mr. LYNDE: What particular goods are these?

Mr. DAVISON: One line in hunting clothes.

Mr. LYNDE: Overall?

Mr. DAVISON: Well, they are manufactured in other places and handled by other dry goods houses, but we make a specialty of hunting clothing and sell large quantities all over the country, east and west.

Mr. LYNDE: Where is your competition from in the southwest particularly?

Mr. DAVISON: St. Louis.

Mr. LYNDE: You find you have competition in the northwest?

Mr. DAVISON: Oh, yes, we do.

Mr. LYNDE: Chicago?

Mr. DAVISON: Chicago and St. Paul.

Mr. LYNDE: I understood you to say you came in contact with them, but did not recognize them?

Mr. DAVISON: We do not. We come in competition with them however.

Mr. LYNDE: When you get out to California, where is the competition there?

Mr. DAVISON: The competition there is from New York, Philadelphia, Chicago and San Francisco.

Mr. LYNDE: Now as a matter of fact, do you sell anything to any extent out on the Pacific Coast?

1678 Mr. DAVISON: I suppose one of the best ways to answer your question is to tell you we have three resident agents or salesmen in California, and three up in Washington and Oregon.

Mr. LYNDE: And you ship from Kansas City?

Mr. DAVISON: Yes, sir.

Mr. LYNDE: As against the water rate from New York to San Francisco?

Mr. DAVISON: Yes, sir.

Mr. LYNDE: You pay the railroad rates from here to the Pacific Coast?

Mr. DAVISON: No, sir; we do not.

Mr. LYNDE: You sell, however, to buyers who do pay that?

Mr. DAVISON: Yes, sir.

Mr. LYNDE: You must scale your prices considerably in order to meet that competition out there, don't you?

Mr. DAVISON: Well, we meet competition.

Mr. LYNDE: That is, you sell at a price that will make the goods sell?

Mr. DAVISON: We sell enough goods to justify us in keeping three salesmen in California.

1679 Mr. LYNDE: Your company is the first named complainant in this case? I suppose you are familiar with the complaint?

Mr. DAVISON: I have never read it.

Mr. LYNDE: Haven't you?

Mr. DAVISON: No, sir.

Mr. LYNDE: You would be surprised possibly to know that St. Louis is not mentioned in that complaint?

Mr. DAVISON: I would be very much surprised, yes, sir.

Mr. LYNDE: You would be surprised, would you?

Mr. DAVISON: Yes, sir.

Mr. Atwood: I am speaking of the extent of the territory covered, you spoke of your own establishment that carries on business nearly all over the country; is that true of the other houses that are doing business in this territory?

Mr. DAVISON: I think it is, especially the dry goods houses.

(Witness excused.)

1680 & 1681 Mr. WEBSTER: I think if the Commission please, that is all of the testimony we desire to offer here today. We had expected to examine one or two more witnesses here today, but they have not put in an appearance as yet, for some reason, we do not know why, and of course we will not ask the Commission to wait on account of their absence. We will have some more testimony which we shall expect to offer at the continuation of this hearing at Chicago on Monday next.

Commissioner CLARK: Do any of the defendants desire to introduce any witnesses at this time?

Mr. LYNDE: We are not prepared to do so here, in view of the hearing in Chicago, and particularly in view of the fact that the complainants are intending to offer further evidence and call other witnesses there.

Commissioner CLARK: I assume it is understood by all in interest that on account of it being impossible to secure for that date the room in the Federal Building at Chicago, we have arranged to continue this hearing at the Lexington Hotel. With that understanding the hearing will be adjourned until 10:00 o'clock A. M. Monday, November 25th, 1907.

1682 Before the Interstate Commerce Commission.

No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY, et al.,
Complainants,
vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, et al.,
Defendants.

CHICAGO, ILLINOIS, *November 25, 1907.*

The Commission met pursuant to adjournment, at the Lexington Hotel, 22nd Street and Michigan Avenue, at 10.00 A. M.

Present: Commissioners Clark and Harlan.

Appearances:

Mr. John L. Webster, for the Complainants.

Mr. J. E. Atwood and Mr. Bell, of counsel.

Mr. E. B. Peirce, for the Chicago, Rock Island & Pacific Railway Company.

1683 Mr. H. C. Barlow, for the Chicago Association of Commerce.

Mr. S. A. Lynde, for the Chicago & Northwestern.

Mr. William Ellis, for the Chicago, Milwaukee & St. Paul Railway Company.

Mr. J. E. Beek, for the St. Paul Jobbers & Manufacturers Association.

Mr. George C. Scott, for the Sioux City Commercial Club.

Mr. Hale Holden, and Geo. E. Crosby, for the Chicago, Burlington & Quincy Ry. Co.

Mr. C. E. Butterfield, for all the New York Central lines named in the Petition.

Mr. C. B. Fernald, for the Pennsylvania Railroad Company.

Mr. Pierce Butler, for the St. Paul Jobbers' & Manufacturers' Ass'n, and the Commercial Club of Minneapolis.

1684 Commissioner CLARK: If there are any new appearances here today that were not filed in Kansas City last week, please make them known.

Mr. BUTTERFIELD: Mr. C. E. Butterfield appears for all the New York Central lines named in the complaint and amended complaint.

Mr. FERNALD: Mr. C. B. Fernald appears for the Pennsylvania lines mentioned in the complaint.

Commissioner CLARK: Are there any other appearances? If not, Mr. Atwood, have you any further testimony to offer?

Mr. ATWOOD: Yes, sir; I have. I wish to straighten out one or two things that were left a little cloudy. I will ask Mr. McVann to take the stand.

E. J. McVANN, recalled for further examination, testified as follows:

Mr. ATWOOD: Mr. McVann, something was said last week with relation to the through line taking the initiative at Montreal, of Canadian through lines. What do you know with relation to where that breaks?

1685 Mr. McVANN: Prior to 1901, as I understand it, the through rate from the Atlantic seaboard broke at Chicago and the junctions correspond to Chicago on the north, including Sault Ste Marie and Mackinaw City, etc.; there were no other through rates published from the Atlantic Seaboard to St. Paul and Minneapolis.

Mr. ATWOOD: That is, beginning at Montreal?

Mr. McVANN: At any point on the Atlantic seaboard, so far as I could find.

Mr. ATWOOD: Now then, supposing a shipment began at Montreal, how would the rate to St. Paul be made up?

Mr. McVANN: By the rate from Montreal to Sault Ste Marie or Mackinaw City.

Mr. ATWOOD: North junctions?

Mr. McVANN: And the various junctions that correspond to them, and the proportional rate from that point to St. Paul or Minneapolis.

Mr. ATWOOD: How was that proportional rate arrived at?

Mr. McVANN: Well, as I testified the other day, it was arrived at by the Soo Line's publication, namely the publication of through rates that were made by the Association's tariffs from Chicago

1686 to St. Paul, and applying those rates by means of application sheets as a joint proportional rate from the Soo and other junctions to St. Paul and Minneapolis.

Mr. ATWOOD: Am I correct in inferring from that, that the ap-

plication sheets are not affected by what transpires east of the north junction points?

Mr. McVANN: That is, you mean as to the making up of the rates?

Mr. ATWOOD: Yes.

Mr. McVANN: No, sir; they would not be. They would simply apply whatever the rates happened to be from Chicago to St. Paul or Minneapolis, the proportional rates, which was then the method of making the through rates from the seaboard and Montreal to St. Paul and Minneapolis, and apply those differences via the Soo, and make the rate from the Soo to St. Paul and Minneapolis the same as it happened to be from Chicago to St. Paul and Minneapolis.

Mr. ATWOOD: In other words, having determined the rate from Chicago or west of Chicago to St. Paul and Minneapolis by the application sheet, you then would arrive at the total through 165¢ rate from the Atlantic seaboard to St. Paul over that line, by adding the through rate from Montreal to that junction?

Mr. McVANN: Yes, sir; that is as I understand it.

Mr. ATWOOD: That results, as I infer from what I understand you to say, that the west of Chicago proportion is fixed by the American lines and not by the Canadian?

Mr. ATWOOD: Yes, sir; that is true. It is fixed by the American lines and the American lines' rates were applied by the Canadian lines.

Mr. ATWOOD: What do you know with relation to the change of rates on St. Paul traffic during the seasons of the year, and particularly any changes that you may have had in mind or with which you can refresh your mind by reference to any minutes that you have, changes that occur up—or down in the winter, or up in the summer?

Mr. McVANN: In going over the history of the rail rates from the earlier years to the time when the through proportional was put in, I noticed the fact that there were a number of variations up and down in the proportionals from Chicago that were applied to St.

Paul and Minneapolis and part of the through rates from 1688 the seaboard.

Mr. ATWOOD: I desire to direct your attention to such changes as would occur to you as being affected by water competition or which would indicate that water competition had any effect—if I have made myself clear to the witness.

Mr. McVANN: There is one change in particular that I noticed here, which was made on June 20, 1899, which raised the all rail rate from Chicago, that is the proportional all rail rate from Chicago to St. Paul, from a 40 cent scale first class to a 50 cent scale first class, right in the middle of June.

Mr. ATWOOD: And I suppose that is a fact, that it is when navigation is active?

Mr. McVANN: Yes.

Mr. PEIRCE: What period is that?

Mr. ATWOOD: In June, 1899.

Mr. McVANN: Do you wish the number of the tariff?

Mr. PRINCE: Just during the month of June?

Mr. ATWOOD: The change was made at that time. He will tell you the length of time they endured, if it is desired.

Commissioner HARLAN: What is the tariff citation?

Mr. McVANN: I. C. C. 87, Joint Freight Tariff W. T. L. No. 117, effective June 20, 1899. I have the note there, "This is the first W. T. L. tariff issued, to which the Soo Line is a party."

Mr. ELLIS: How long was that tariff in force, Mr. McVann?

Mr. McVANN: That tariff was in force until February 20, 1901, and was cancelled by I. C. C. No. 213, W. T. L. No. 146.

Mr. ATWOOD: Which changed the rate to what?

Mr. McVANN: There was an overlap there in those rates. On January 2, 1901 W. T. L. 430, I. C. C. No. 208 established the \$1.15 scale, but apparently the 50 cent proportional scale was not cancelled specifically until February 20th by I. C. C. 213, and that cancellation was merely by inference, because that was the first tariff in the file which omitted any mention of the application of the 50 cent proportional to St. Paul and Minneapolis, thereby eliminating that proportional to St. Paul and Minneapolis; but tariff No. I. C. C. 208 had been in effect since January 2nd, establishing the \$1.15 scale.

Mr. ATWOOD: Did the change which applied in February, 1901, result in the diminution or increase?

Mr. McVANN: That was a reduction of the rail lines' proportional because, of course, they only get 40 cents out of the \$1.15 rate on February 20th, and they had been getting 50 cents from the application of the other on January 1st, if the change was made then.

Mr. ATWOOD: It resulted in the diminution of the all rail rate or the west of Chicago proportional in the middle of the winter when there was no water competition?

Mr. McVANN: Yes, sir; from 50 cents to 40 cents.

Mr. ATWOOD: How about the duration of that rate?

Mr. McVANN: That basis has been in effect until the present date from January 2, 1901, until the present time, the \$1.15 scale.

Mr. ATWOOD: Was there any other thought in that connection that seemed pertinent or responsive to any question that I have asked?

Mr. McVANN: No, I guess not.

Mr. ATWOOD: What do you know about the ownership of the lake boats, with a view of throwing some light upon the actual competition between the all rail and the rail and water rate?

Mr. McVANN: The regularly operated boat lines on the Great Lakes, from Buffalo, Erie and Fairport to Duluth and Superior, are owned in the main practically wholly by the eastern trunk lines; that is to say, the Erie & Western Transportation Company, operating the Anchor Line, is owned by the Pennsylvania Railroad, the Union Steamboat Company is owned by Erie interests; the Western Transit Company is owned by the New York Central interests, and I understand that the Baltimore & Ohio operate a boat

line from Fairport, but under just what name or designation I don't know.

Mr. Atwood: What opportunities then have you had for ascertaining the facts to which you have just adverted?

Mr. McVANN: I was agent of the Erie & Western Transportation Company or Anchor Line from 1891 to 1902, at Sioux City, Iowa and Dubuque, Iowa, and had in my possession all the tariffs of that line, and was informed, as I was compelled to be by my position, about what the other lines were doing and what their tariffs were.

1692 Mr. Atwood: That is special information in addition to any other you may have ascertained from the records?

Mr. McVANN: Yes, sir.

Mr. Atwood: Can you see any connection between this fact you have just stated and the indisposition of the east of Chicago lines to sacrifice any or but little of their proportion of the through rate?

Mr. McVANN: Well, naturally if they control the avenues of transportation up to Duluth and Superior, they would exact their local rates up to Chicago.

Mr. Atwood: I simply wished to point the moral. Now, with relation to freight conditions in the northwest, where it is in evidence shown that the Omaha jobber encountered competition from St. Paul, I wish you would state that which you know with relation to the results of the total freights through to St. Paul and breaking and again local to the various points to the northwest, and through from the Atlantic seaboard to Omaha and breaking local at these same points in the northwest, bearing in mind Montana and common points and Spokane and common points.

1693 Mr. McVANN: As Mr. Byrne and Mr. Smith testified the other day in Kansas City, they must go to New England points and the Atlantic seaboard for the merchandise, and must bring it to the Missouri river at Omaha. In doing so, of course, they have to consider their freight rate to Omaha as against the freight rate to St. Paul paid by the jobber there, and they meet the condition first that the rates from those New England points and New York on the standard all rail lines is \$1.15 a hundred, and their rate is \$1.47 a hundred on first class. That results in a discrepancy against the Omaha jobber of 32 cents a hundred on first class and of course he owns the goods with that handicap at Omaha. Now, in going out from Omaha to distribute those goods in the consuming territory in Montana, Idaho, Washington, etc., he pays to Billings, Montana precisely the same local rate as the St. Paul jobber, therefore lays his goods down in Billings subject to the original handicap of 32 cents on his in rate; he goes to Spokane on the same basis and Seattle and Portland on the same basis, under a handicap of 32 cents on his first class rate.

1694 Mr. Atwood: Are they competitive points?

Mr. McVANN: Portland, Seattle and Spokane, yes, sir.

Mr. Atwood: So even in the competitive points he is already handicapped the 32 cents a hundred on first class?

Mr. McVANN: The measure of the difference against him on his in freight.

Mr. ATWOOD: And that is, as you say, 32 cents?

Mr. McVANN: Yes, sir.

Mr. ATWOOD: How about non-competitive points, those points on the lines running out of St. Paul where no competition transpires?

Mr. McVANN: The rate to Montana and common points from Omaha are the same as from St. Paul, due probably to the competition exerted by the Union Pacific Railroad, which has a direct line to Helena, Butte, etc.; going west between Helena, Butte and Spokane there is quite an extensive territory which is local to the Northern Pacific Railway, for example, and just as soon as they leave Spokane the rate from Omaha is advanced materially above the rate from St. Paul to those points, thereby increasing the handicap under which the Omaha merchants must compete with 1695 St. Paul in their local territory.

Mr. ATWOOD: I suppose that varies at different non-competitive points?

Mr. McVANN: It does.

Mr. ATWOOD: Have you in mind some places that are illustrative of the truth you have just propounded?

Mr. McVANN: Yes, sir; I have a number of points on which I have compiled the rates and figured them out.

Mr. ATWOOD: So you know what that difference is at those different points?

Mr. McVANN: Yes, sir.

Mr. ATWOOD: I wish you would give it to us.

Mr. McVANN: This is a statement covering a few points. This statement shows the combination of the rates by way of Omaha and St. Paul to Missoula, Montana, a local point on the Northern Pacific Railroad.

Mr. ATWOOD: What is the total discrimination, if I am not misusing the word, at that point, including the original 32 cents, plus any additional—

Mr. McVANN: The combination by way of Omaha to Missoula, is \$4.20 a hundred from New York; the combination by way of 1696 St. Paul to Missoula is \$3.51 per hundred. The difference is 69 cents against the Omaha merchants.

Mr. ATWOOD: How about the comparative distances between Missoula and the seaboard by either way, or from Omaha and St. Paul?

Mr. McVANN: The distances from Omaha and St. Paul to Missoula are almost precisely the same; there is not a mile difference, I think, as shown in the schedule, one mile difference.

Mr. ATWOOD: And yet the difference is sixty odd cents?

Mr. McVANN: Sixty-nine cents.

Mr. ATWOOD: Have you another point that illustrates this?

Mr. McVANN: St. Regis, Montana, another point similarly situated; \$4.40 is the combination by way of Omaha and \$3.85 is the combination by way of St. Paul, putting the Omaha merchant at a disadvantage of 55 cents total per hundred pounds.

Commissioner CLARK: If you will pardon my interruption, I

would like to ask Mr. McVann, how you make up those combinations, what rates do you take into consideration to make that combinations by Omaha?

1697 Mr. McVANN: \$1.47 first class freight to Omaha and the local rate from Omaha to this point, the published tariff rate.

Commissioner CLARK: Well, what local rate is there from Omaha to Missoula?

Mr. McVANN: There is a regular published tariff rate—do you mean local in the sense of being a joint—

Commissioner CLARK: Do you make it up from the joint rates applying from Omaha to Missoula, or make it up from a combination of locals?

Mr. McVANN: From the regular published tariff over the Burlington road, which we refer to as local, although I suppose it is the joint rate from Omaha over the Burlington and the Northern Pacific.

Commissioner CLARK: Do you take the Burlington rate from Omaha to Billings?

Mr. McVANN: No, it is the straight rate, the Burlington publishes a straight tariff from Omaha to these points.

Commissioner CLARK: Then it is a joint rate to Missoula?

1698 Mr. McVANN: Yes.

Commissioner CLARK: And St. Paul, you take the \$1.15 scale to St. Paul and the Northern Pacific local to Missoula?

Mr. McVANN: Yes, sir; that is the actual rate which must be paid to reach that point. The reason, if I may add, for the greater difference at the local points, and then returning to the 32 cent basis at Spokane and Spokane points, is that the rate from St. Paul, the merchandise rate from St. Paul and the merchandise rate from Omaha to Montana common points being the same, then they are graded up very sharply from Omaha in the intermediate territory and then graded down again right outside of Spokane, so as to bring the rates from St. Paul and Omaha together at Spokane again.

Mr. ATWOOD: And you say Spokane is a competitive point?

Mr. McVANN: Yes.

Mr. ATWOOD: And these others are not competitive points?

Mr. McVANN: The intermediate points are non-competitive, yes, sir.

1699 Mr. ATWOOD: Have you any other illustrative points in that connection?

Mr. McVANN: I have one other point here intermediate, Plains, Montana.

Mr. ATWOOD: How about the distances there?

Mr. McVANN: The situation remains the same; the distances remain the same from Omaha and St. Paul and the rate is \$4.40 by way of Omaha and \$3.66 by way of St. Paul.

Mr. ATWOOD: And the difference?

Mr. McVANN: The difference is 74 cents.

Mr. ATWOOD: Have you any points in mind where the distance is less by Omaha and where the rate is greater?

Mr. McVANN: At the Pacific Coast termini the distance from Omaha is materially less than from St. Paul.

Mr. ATWOOD: Give us the figures?

Mr. McVANN: The distance from Omaha to Portland being 1,303 miles, and the distance from St. Paul to Portland being 1925 miles; the distance from Omaha to Seattle being 1,488 miles, and from St. Paul 1828 miles.

Mr. ATWOOD: Give the differences?

Mr. McVANN: The differences held just the same at the 32 cent rate—

Mr. ATWOOD: No, the difference in mileage. You have given these sums without giving the difference.

Mr. McVANN: Omaha is 622 miles nearer Portland and 340 miles nearer Seattle.

Mr. ATWOOD: How about the rate?

Mr. McVANN: The merchandise rates from Omaha to Spokane and those points are the same, thereby preserving the initial handicap of 32 cents.

Mr. ATWOOD: Are there any conditions resultant from the adjustment of tariffs local or through to the south or east, or southwest of Omaha that would in any wise compensate for this seemingly unhappy situation in the northwest?

Mr. McVANN: No sir, there is not.

Mr. ATWOOD: What do you find there to be the fact with relation to a combination on St. Paul or rather, St. Louis, as an example.

Mr. McVANN: Practically in the eastern one-third of 1701 Nebraska, Omaha is at a clear disadvantage as against St.

Louis; that is to say, on our rate of \$1.47 in on first class and our merchandise rate out on first class, our total rate to practically the entire eastern one-third of Nebraska is materially higher than the total rate figured by way of St. Louis.

Mr. ATWOOD: And how about the distances via Omaha and via the other points you have adverted to?

Mr. McVANN: Taking the short line mileage up to Omaha and up to St. Louis, adding the actual mileage from Omaha and St. Louis to any point which is desired to be figured on, the Omaha mileage is less.

Mr. ATWOOD: And yet the rate is—

Mr. McVANN: Greater.

Mr. ATWOOD: Does that truth have application to Kansas City—I do not desire to go into a great amount of detail, but speaking generally.

Mr. McVANN: The same condition would apply to Kansas City in the same territory, much of which is about equally distant from Omaha and Kansas City. Southern Nebraska and north- 1702 eastern Kansas extending west a distance of perhaps one hundred to one hundred and fifty miles, and would also apply to St. Joseph, although not quite as badly at St. Joseph, because St. Joseph has a little better local rate out than either Kansas City or Omaha to some of that territory.

Mr. ATWOOD: And this resultant condition from the disadvantage growing from these combinations producing this disparity and discrepancy, is there anything from the rate maker's standpoint abnormal and improper?

Mr. McVANN: It seems to me that it is.

Mr. ATWOOD: Have you in mind any authority or any recognized authority in rate making, one who is recognized as being skilled and learned in such matters, who has spoken in this regard?

Mr. McVANN: Yes, I recall one definite instance.

Mr. ATWOOD: You can give the instance to the Commission, with their permission.

Mr. McVANN: A man who is generally recognized as an authority on rate making and who has had an active hand in rate making in this very territory for a long period of time, as an
1703 officer of the railroads entering right into the territory, recorded his opinion in a brief before this Commission very recently, using precisely the same situation except that it is reversed as to direction, namely, that St. Louis was entitled to a combination of rates to the consuming territory of Arkansas because of the fact, first, that it was the nearest market to that territory and because of the fact, second, that it must enter the states of Nebraska and Kansas for its supplies in competition with Kansas City and Omaha, and that, therefore, its rates to the territory which consumed that merchandise should be made on a combination which would not exceed the combination by way of Kansas City and Omaha from the territory to which St. Louis had to go to get the merchandise.

Mr. LYNDE: Mr. Commissioner, I desire to move that that be stricken out. I do not know how we are to meet that line of proof; a quotation of some rate that was cited to the Commission in some other case; I do not see how we can be called upon to meet that sort of evidence.

Commissioner CLARK: I think the objection is well taken.

1704 Mr. ATWOOD: Let me make one suggestion with your permission. Let me give the authority.

Mr. LYNDE: I do not think it makes any difference who the authority is, it is a hearsay proposition from every point of view.

Mr. CLARK: I think if you want to introduce the opinion of this gentleman as an expert, who made this brief, you should introduce the witness and not let Mr. McVann or anybody else testify as to what he said.

Mr. ATWOOD: Now then, the proposed rate of \$1.10, how was that arrived at?

Mr. McVANN: By ascertaining the per ton per mile compensation of the lines east of Chicago, by taking the actual earnings of the lines from Chicago and St. Louis, 14.7 cents, and by extending that on the same basis per ton per mile, taking the distance from Chicago to Kansas City as the short line distance from Chicago to the Missouri river, 458 miles, on the same per ton per mile basis.

Mr. ATWOOD: Now, then, with relation to that proposed
1905 rate, it was established, as I recall it, last week at Kansas City, that the New York Mississippi River rate, the 87 cent rate was proportioned so that 14.7 cents was the proportion that goes to the west of Chicago lines.

Mr. McVANN: Chicago to St. Louis, yes, sir.

Mr. ATWOOD: And we ascertained by computations then made that

approximately 9 cents would be the proportion between the two rivers to be added to the 14.7 cents?

Mr. McVANN: Upon that basis, yes, sir.

Mr. ATWOOD: Which made it a 23.7 cent rate west of Chicago to Missouri river points?

Mr. McVANN: Yes.

Mr. ATWOOD: I will thank you if you will, to add 20 per cent to that with a view of making up any differences in transportation conditions between the rivers over those obtained between the Mississippi River and Chicago and see what the result is.

Mr. McVANN: Twenty per cent of the 9 cents would be 1.8 cents, which would make it 10.8 cents west of the river, which added to the 14.7 cents would give a rate of 25.5 cents for the proportion from Chicago including a 20 per cent addition for any difference in transportation conditions west of the Mississippi river.

Mr. ATWOOD: Add that to the east of Chicago rate and what have you as a total for the Atlantic Missouri river rate?

Mr. McVANN: Practically 98 cents, 97.8 cents.

Mr. ATWOOD: What is the difference between that and the rate proposed?

Mr. McVANN: Twelve cents per hundred.

Mr. ATWOOD: What percentage of that is it on the west of Chicago rates or proportion, or portions?

Mr. McVANN: It is 50 per cent, a little more than 50—or less than 50; 47 per cent, to be exact.

Mr. ATWOOD: Assuming that the 14.7 cents from Chicago to the Mississippi river is compensatory, adding to that for the trans-Mississippi portion of the transit, 20 per cent for supposed differences in transportation conditions, then you would have such a rate as would result, if \$1.10 was established, it giving 50 per cent profit on the transportation west of Chicago.

1707 Mr. McVANN: If that basis was assumed to be compensation was assumed to be compensatory, it would yield about 47 per cent profit, in making up the \$1.10 rate.

Mr. ATWOOD: Now, have you at hand or in your mind the earnings per ton per mile, we will say, on the Pennsylvania and Burlington, taking each as a representative of the east and west of Chicago railroad conditions?

Mr. McVANN: I have the figures there; I prefer not to quote it from memory.

Mr. ATWOOD: State first if you know whether or not transportation conditions in the territory traversed by the Pennsylvania are fully as arduous as those traversed by the Burlington from Chicago to the Missouri river?

Mr. McVANN: You mean operating conditions, I take it?

Mr. ATWOOD: Yes.

Mr. McVANN: I should say they are very much more arduous.

Mr. ATWOOD: Now then, give us the per ton per train mile.

1708 Mr. McVANN: The earnings per ton per train mile for the Pennsylvania railroad for the year ending June 30, 1906, were 8.04 mills.

Mr. ATWOOD: And as to the Burlington?

Mr. McVANN: That is vice versa, the earnings of the Burlington were 8.04 mills and the Pennsylvania 5.88 mills.

Mr. ATWOOD: And the advantage in that particular item is how much?

Mr. McVANN: 2.16 mills of the western lines over the eastern.

Mr. ATWOOD: Continuing the computation that that suggests to you, what do you find?

Mr. McVANN: That is a percentage of advantage of the 8 mills over the 5 mills or a proportion of 36.7 per cent; the percentage of advance which is asked for in the rate up to the Missouri river in our petition is the difference between the present rate of \$1.47 and \$1.10, which is 37 cents per hundred, and that is 25 per cent reduction on the present rate.

1709 Mr. ATWOOD: That would be a reduction of 25 per cent of the present rate?

Mr. McVANN: Yes.

Mr. ATWOOD: Now, what is the portion or proportion, say portion, of the total tonnage of that road, the Burlington, that is the merchandise which comes within the sweep of the proposed change?

Mr. McVANN: The Burlington road did not file with the Commission the same exhibit of its various commodities hauled, that the other roads did, claiming not to have the data necessary upon which to base it. The Burlington road, however, is a tolerably heavy merchandise carrier as compared with the other western lines whose percentage varies of merchandise carriage, of their total *total* tonnage, from 3 per cent to 9½ per cent.

Mr. ATWOOD: That is the least is 3 per cent and the highest 8 per cent?

Mr. McVANN: 8.55 per cent in the case of the St. Paul road. I have used 10 per cent.

Mr. ATWOOD: Used it as a basis of your computation?

1710 Mr. McVANN: The total freight earnings for the Burlington for the same year, 1906, were about \$51,000,000 for the whole system. Ten per cent of that amount represents the merchandise earnings, \$5,000,000 in round numbers.

Mr. ATWOOD: While we have not, I suppose, that proportion carried between Chicago and the Missouri river, I will ask you to give us the proportion of that road to the whole system.

Mr. McVANN: The Burlington Road reported here as operating about 8600 miles. The mileage from Chicago to the Missouri river is about 500 miles.

Mr. ATWOOD: Or about what per cent?

Mr. McVANN: Six per cent.

Mr. ATWOOD: Six per cent of the \$5,000,000 of merchandise is what?

Mr. McVANN: \$300,000.

Mr. ATWOOD: And the reduction proposed is how much?

Mr. McVANN: Twenty-five per cent.

Mr. ATWOOD: And that is of \$300,000, how much?

Mr. McVANN: \$75,000 for the Burlington's part of it.

1711 Mr. ATWOOD: And that would be the sum total of the diminution, as you compute it, of the earnings of the Burlington road in the event that the rate proposed should become effective.

Mr. McVANN: And if their merchandise business equals 10 per cent of their total business.

Mr. ATWOOD: Well, since the heavier roads are less than that, I suppose it is fair to call it at least 10 per cent?

Mr. McVANN: Yes.

Mr. ATWOOD: Nearly all if not quite all, Mr. McVann, of your testimony, has been with reference to jobbers situated in these different cities. I will ask you whether or not any of the complainants are not jobbers but retailers, who only are interested in receiving their goods at a fair rate?

Mr. McVANN: That is true, there are a number of the complainants in Omaha and Kansas City.

Mr. ATWOOD: In round numbers, I do not care exactly, how many in Omaha and how many in Kansas City.

Mr. McVANN: Ten, as I recall it in Omaha and eight in Kansas City—ten in Kansas City.

1712 Mr. ATWOOD: Is there any correction you desire to make in reference to the table which I think was filed on Friday, touching upon trans-continental rates and the proportionals thereon?

Mr. McVANN: Yes. This correction. The table that I filed showing the proportion of the trans-continental rates which accrued to the lines—that is the earnings which accrued on the lines from Chicago to the Missouri river, were based in this way, the regular division of the \$3.00 first class trans-continental rate from New York to San Francisco is 25 per cent to the lines east of Chicago, leaving the balance to be divided by the lines west of Chicago 15 per cent and 35 per cent, 15 per cent to accrue to the lines from Chicago to the Missouri river. There is a note in that percentage division sheet, stating that this division is made after deducting 5 cents per hundred-weight, but no explanation of what that 5 cents is or where it goes.

Mr. ATWOOD: Is there not accompanying that note or one kindred to it, a statement that that arbitrary 5 cents applies to goods having stopped their shipment in Chicago and silent with relation to that beginning its journey into Chicago?

Mr. McVANN: Yes, that could fairly be inferred by comparing the percentage reports of two different lines, one making no mention of the 5 cents being taken out, and the other making mention of it only in that ambiguous way.

Mr. ATWOOD: And, in connection with the Chicago initial business?

Mr. McVANN: And in connection with the Chicago initial business and not originating in New York.

Mr. ATWOOD: In other words, it is silent with the business originating at New York as to the 5 cents arbitrary?

Mr. McVANN: Yes.

Mr. ATWOOD: Leaving the west of Chicago portion to be divided

between the east of Missouri river lines 15 per cent and west of Missouri river lines 85 per cent?

Mr. McVANN: Yes.

Mr. ATWOOD: Now, what is your source of information?

1714 Mr. McVANN: The percentages of divisions on these rates that were filed at the office of the Commission by the various railroads in response to the request of the Commission for that information.

Mr. ATWOOD: Now then, that being so, how far do you differ from Mr. Bell at all with relation to the proportion of this trans-continental rate, the 15 per cent west of Chicago portion, that goes to the Chicago to the Missouri river line?

Mr. McVANN: In making up my computation, following the ordinary reading of such a note about the 5 cent deduction, I assume that the 5 cent deduction went to the lines from Chicago to the Missouri river, and therefore, in making the proportion which was used by them from Chicago to the Missouri river on that basis, naturally we take their 15 per cent and add five cents to it on first, second, third, fourth and fifth class matter.

Mr. ATWOOD: And that being now eliminated on the goods originating at New York, would leave Mr. Bell's 33 cents approximately correct?

1715 Mr. McVANN: Yes, sir, and so would agree approximately with one of the percentage sheets of the road which I consulted subsequently.

Mr. ATWOOD: You have prepared, I think, and showed to me this morning a tabulation or some notes illustrative of the situation or disparity in commodities?

Mr. McVANN: Yes, sir.

Mr. ATWOOD: Well, if you have that with you, I wish you would give what light you can give the Commission upon it. This I ask with a view of directing the Commission's attention to the fact that what you have just explained about the 33 cent proportion that goes to the Chicago Missouri river line not being an abnormal or unusual condition but is found in other instances as illustrated by your commodity table.

Mr. McVANN: In the trans-continental tariffs, I want to explain—

Mr. HOLDEN: It seems to us that any proof on these lines goes wholly beyond this complaint. There is no charge in this complaint bringing commodity rates into the field, and how is it competent on this complaint to show that under certain divisions in such commodity rates certain carriers make certain revenue and then show that that bears upon their division of the class rates? They may get less division from certain commodity rates, and that would lead to an examination as to under what circumstances commodity rates are made. It seems to me that we are getting entirely outside of the issues in this complaint.

Mr. ATWOOD: We are not complaining about the rate, but giving this as an illustration.

Commissioner CLARK: We have the understanding that in a

general way the complainants undertake to show that the carriers accept certain divisions of rate as their compensation for certain service, and they assume that those rates are compensatory, and they undertake to draw a comparison between such divisions so accepted and the rates charged on the traffic as covered by this complaint. We do not think that we, as a matter of law, have a right to say that this evidence is not admissible and has no bearing. It is largely a matter of argument and we think should be admitted for what it is worth.

Mr. ATWOOD: Have you the question in mind?

Mr. McVANN: Yes, sir; I wanted to say—

(Question repeated.)

Mr. McVANN: I wanted to explain before directly answering that question—

Mr. ATWOOD: Go ahead.

Mr. McVANN: That in the trans-continental tariffs from which both the class rate comparison figures and these commodity figures were taken, there is a very large, an unusually large line of commodities taking a very much greater number of articles out of the ordinary class rate columns than is usually, done, therefore it is not quite fair as a comparison to take, first, or second, or third class rates out of the trans-continental tariffs, and compare it with the tonnage carried on that rate between Chicago and Missouri river local, because, for example, between Chicago and the Missouri river locals, dry goods are carried first class; boots and shoes are carried first class; but in the trans-continental tariff they are carried at the

commodity rate. Dry goods, medicines, chemicals, etc., are carried in the trans-continental tariff at the commodity rate, but between Chicago and the Missouri river locals at first class. That is my main purpose in taking up the commodities, because it did not seem fair to compare the class rate and class rate

earnings alone leaving out this large tonnage, out of the question. And upon that basis I have taken certain articles which occurred to me as being carried in the regular classification between Chicago and the Missouri river, and being carried upon a commodity basis between New York and the Atlantic seaboard and the Pacific seaboard. For example, my first example was cotton piece goods. Those are carried at third class rating from Chicago and the Mississippi river to the Missouri river local, where they originate at New York, and the earnings from Chicago to the Missouri river where the cotton piece goods originated in New York is 46.2 cents. Now, there is a carload rating in cotton piece goods from the Atlantic seaboard to the Pacific Coast termini, which yields to the lines from Chicago to the Missouri river 15.5 cents, and on less than carload ratings 51.1 cent, as against the 46.2 earned from Chicago to the

Missouri river on goods destined to Omaha. There is also a commodity rate on cotton duck, denim, drill, sheeting, bagging, etc. of 19.4 cents on less than carloads, that yield from Chicago to the Missouri river, trans-continental business.

Mr. ATWOOD: I understand these figures you are giving are taken out of the trans-continental rate?

Mr. McVANN: Yes, regular trans-continental rates, divided on the basis of this—boots and shoes carried from Chicago the Missouri river, when originating in the east and destined to the Pacific Coast, at 32.4.

Mr. ATWOOD: And otherwise?

Mr. McVANN: When destined to Omaha. 75.2 cents. Drugs and medicines, chemicals, extracts and dye stuff, trans-continental, Chicago to Missouri river points, 25.6 cents, and to Omaha 75.2 cents.

Mr. ATWOOD: How about that \$1.15 rate, the same that applies to St. Paul, applying to the Missouri river when the matter is destined beyond the Missouri river. Explain it as fully as you think necessary.

Mr. McVANN: As I understand the W. T. L. Tariff No. 209, from which I testified as to the application of these rates the other day, that tariff permits and admits the application of the \$1.15 scale which is named primarily from the Atlantic seaboard to St. Paul and Minneapolis to be applied to the Missouri river crossings and a basing point to make through rates to Montana common points and Keetenai Lake territory, that is, to equalize the Missouri river crossings with St. Paul and Minneapolis in reaching that territory. And one of the reasons why it is necessary is that that particular territory, namely Montana common points, Keetenai Lake country and Spokane and common points is specifically excepted from the application of the New York to the Mississippi river basis of 87 cents, and take the local rates up to Chicago so far as the eastern lines are concerned, therefore that tariff clearly authorizes the use of the \$1.15 as a basing scale.

Mr. ATWOOD: From New York?

Mr. McVANN: From New York up to the Mississippi river crossings on business destined to Montana common points, Keetenai Lake country and Spokane common points.

Mr. ATWOOD: But if it stops at the Missouri river it is \$1.47.

1721 Mr. McVANN: Yes, sir.

Commissioner CLARK: Do you desire to cross-examine this witness?

Cross-examination.

Mr. HOLDEN: You spoke something about the adjustment of rates to Montana points out of Omaha and also out of St. Paul.

Mr. McVANN: Yes, sir.

Mr. HOLDEN: What is the relative adjustment of rates between Omaha and St. Paul to Nebraska points?

Mr. McVANN: The St. Paul rates are very much higher, of course.

Mr. HOLDEN: How is it to Colorado?

Mr. McVANN: St. Paul rates are higher than Missouri River points, as I understand it.

Mr. HOLDEN: Is that true also of Kansas?

Mr. McVANN: Certainly.

Mr. HOLDEN: And as you go further south the difference is greater?

Mr. McVANN: Decidedly, yes, sir.

Mr. HOLDEN: So that St. Paul is at a distinct disadvantage
1722 in all the territory south of Nebraska and west of Omaha?

Mr. McVANN: Yes, sir; just as we have a disadvantage in North and South Dakota and Minnesota.

Mr. HOLDEN: In those common point places you speak of, you have the same rate as St. Paul, on the other hand, your disadvantage being only the 32 cent disadvantage that you referred to, at the present time, resulting from the difference between the rates from Chicago to St. Paul?

Mr. McVANN: To the competitive Montana points, common points, our merchandise rate is at the same as St. Paul.

Mr. HOLDEN: So you are at an equal advantage with St. Paul on the adjustment, excepting the 32 cents?

Mr. McVANN: We are on an equal footing with St. Paul as to our merchandise rate, out to those points, yes, sir.

Mr. HOLDEN: In Kansas City and even in that territory it comes back to the 32 cent proposition?

Mr. McVANN: Yes, sir.

Mr. HOLDEN: These other disadvantages at points like Missoula which are local points—and by the way, I see, if the
1723 Commission please, I am quoted here in the record as saying that Missoula is an unimportant point; I did not say that, and I would like to have the record corrected; it is a local point on the Northern Pacific road.

Mr. McVANN: I understand it, is, yes.

Mr. HOLDEN: Conditions arise on those lines out there which have nothing to do with this complaint?

Mr. McVANN: No, and I do not understand that we complain of those rates at all, merely using them to show the excessive rates—

Mr. HOLDEN: But you are adding on top of the 32 cent disadvantage the difference between that and 60 cents to intensify the difference, and yet that difference arises from conditions out in that country which have nothing to do with this complaint.

Mr. McVANN: But it stands between us and our ability to sell the goods in competition with St. Paul?

Mr. HOLDEN: But the 32 cent proposition is the only one involved in this complaint, and we are not trying the local rates on the Northern Pacific road.

1724 Mr. McVANN: No.

Mr. HOLDEN: I do not understand why you draw the comparison.

Mr. McVANN: Simply to show the effects of the rate into Omaha as against the rate into St. Paul at points where we sell our goods in competition with St. Paul.

Mr. HOLDEN: You say that the Burlington road in the year 1906 was operating approximately 8600 miles?

Mr. McVANN: So their report to the Commission shows:

Mr. HOLDEN: What mileage did you treat as handling this Missouri river business?

Mr. McVANN: I took five hundred miles.

Mr. HOLDEN: Has not the Burlington got several lines from Chicago to St. Louis and the Missouri river aggregating a greater amount than 500 miles? Have you taken it on the theory that they had one single line of 500 miles from Chicago to the Missouri river? Is it not a fact that that mileage which shares in the earnings of this business is very much greater than 500 miles?

Mr. McVANN: I took the 500 miles as a typical line from Chicago to the Missouri river.

1725 Mr. HOLDEN: Yes, but if we have three or four lines all sharing in this business, your figures would have to be recast, would they not?

Mr. McVANN: Yes, I suppose they would.

Mr. HOLDEN: Some of the track is double track, which you did not take into consideration?

Mr. McVANN: I do not understand in showing their total mileage at 8600 miles you take that into account.

Mr. HOLDEN: I am not entirely clear myself about it, but I wanted to get at what your figures were based on. You undertook to make some comparison between conditions on the Pennsylvania and conditions on the Burlington. As an expert, you think they are fairly similar, do you?

Mr. McVANN: I did not so testify, as I remember.

Mr. HOLDEN: I cannot quite get at what you intended to arrive at by your testimony.

Mr. McVANN: I testified that the operating conditions on the Pennsylvania railroad were much more arduous than on the Chicago, Burlington & Quincy, as I understand.

Mr. HOLDEN: But did you go in your investigation, into the question of the relative density of traffic?

1726 Mr. McVANN: No, but I could easily do that. The factor is well known.

Mr. HOLDEN: You did not use that in estimating the results, you did not take the question of density of traffic into consideration?

Mr. HOLDEN: I referred simply in my answer to the operating conditions, solely, and you will remember that I corrected Mr. Atwood when he spoke of transportation conditions. I wanted to confine my answers to operating conditions.

Mr. HOLDEN: Have you ever made any careful comparison of the different parts of the Burlington system to see what the operating conditions are?

Mr. McVANN: Yes, I have been over most of the Iowa lines and Illinois lines of the Burlington road in daylight.

Mr. HOLDEN: Have you been over the lines in daylight to St. Paul?

Mr. McVANN: Yes.

Mr. HOLDEN: That runs along the bank of the Mississippi river almost the entire way.

Mr. McVANN: Yes, from some point north of Savannah.

1727 Mr. HOLDEN: That is a water grade practically, is it not?

Mr. McVANN: I don't know whether it is; I am not engineer enough to say that it follows the water grade.

Mr. HOLDEN: You are speaking about the relative difficulty of operating conditions. I suppose a line that follows practically closely along a stream of water has practically a water grade, has it not; is not that the term that is usually used?

Mr. McVANN: No, I don't suppose because a railroad follows close along a stream it would be necessarily a water grade.

Mr. HOLDEN: But where is the Burlington tracks, with reference to the Mississippi river along there?

Mr. McVANN: As I remember it, a good deal of it is along the river.

Mr. HOLDEN: That would be approximately a level grade most of the way?

Mr. McVANN: Yes, I should say it would.

Mr. HOLDEN: And the conditions down in Missouri, what do you say as to those conditions?

1728 Mr. McVANN: I would not say anything much as to those conditions. I never was over the old H. & St. Joe Line but once in daylight.

Mr. HOLDEN: And you know whether the same conditions you have spoken of on this water grade would apply down there or not?

Mr. McVANN: It did not strike me the one time I was over the Hannibal and St. Joe in daylight that there was any very difficult operating conditions there.

Mr. HOLDEN: You would be comparatively surprised if the relative hauling capacity of an engine is about half as great down there as it is on the St. Paul line, would you not?

Mr. McVANN: I don't know that I would be surprised, because I know so little about it. I would accept your statement.

Mr. HOLDEN: So I understand you have no definite information and have made no examination of the operating conditions on the parts of the Burlington line we have been speaking of?

Mr. McVANN: On the Iowa lines and Illinois lines and
1729 pretty much on your St. Paul line, I am somewhat familiar with operating conditions, I think.

Mr. HOLDEN: But down in through to St. Joseph and Kansas City and in through the Northern part of Missouri, you don't know anything about it?

Mr. McVANN: Not much about it.

Mr. HOLDEN: You were speaking the other day as well as this morning about the actions of the Soo line, and in relation to this St. Paul rate. Your investigation, I think you said began in what time in 1897?

Mr. McVANN: My investigation of the Soo line rates began with the first tariff which the Soo line has filed with the Interstate Commerce Commission, showing the merchandise rates westbound.

Mr. HOLDEN: What date in 1897 was that?

Mr. ATWOOD: June 1899.

Mr. McVANN: Under Soo line G. F. D. No. 2,247, August 9, 1897, I. C. C. No. 239, effective August 9, 1897, proportionals joint freight tariffs between Sault Ste. Marie, Mackinaw City, Gladstone,

Menominee, Michigan and Kewanee, Wisconsin, and Milwaukee, Minneapolis and St. Paul.

Mr. LYNDE: Have you a copy of it there?

Mr. McVANN: Not of the tariff, no, sir. There was only the one copy on the files of the Commission. I traced the Soo line merchandise tariff files back to the earliest tariff they had on file with the Commission, so far as I could ascertain, and that was this tariff.

Mr. HOLDEN: Just one more question. In your testimony you spoke about the \$1.15 rate applying via Missouri river and Omaha on trans-continental business.

1731 Mr. McVANN: Not on trans-continental business.

Mr. HOLDEN: On Montana business?

Mr. McVANN: Yes.

Mr. HOLDEN: Do I understand you to say anything about what your idea of the division of the carriers was in the handling of the business?

Mr. McVANN: I did not go into it, but I know about what they are, however.

Mr. HOLDEN: It is not on the basis of St. Paul?

Mr. McVANN: The \$1.15 rate when applied to Missouri River as a basic rate for Montana points is on the basis of St. Paul; the lines east of Chicago are allowed their full local, of course, as they are on the St. Paul business, and the resulting forty cent difference to the Missouri River is added to the merchandise local rate from the Missouri River to Helena, for example, and the resultant rate is divided upon the regularly agreed percentages on Montana common points business between the lines from Chicago to Helena.

Mr. HOLDEN: You do not claim it is divided on the basis of the St. Paul rate, do you?

Mr. McVANN: I don't know; I could not ascertain what the divisions were on Chicago, Montana common points business and therefore I could not work out an exact division of that rate, but that is the manner in which it is divided.

Mr. LYNDE: What is your authority for your statement as to the action of the Canadian lines from Montreal? You spoke as if you knew all about it. What was your authority.

Mr. McVANN: I did not intend to convey the impression that I knew all about it.

Mr. LYNDE: Well, I got that impression.

Mr. McVANN: I intended to convey the impression that my information was——

Mr. LYNDE: You need not state what your information is. I am talking now——

Mr. McVANN: My information——

Mr. LYNDE: Your authority.

Mr. McVANN: Simply the fact that there were no tariffs on file with the Interstate Commerce Commission on the part of the Canadian Pacific Railway naming any through rates to St. Paul and Minneapolis on merchandise and no tariffs which could be applied to

1733 merchandise shipped through the Soo and other Soo Line junctions to St. Paul and Minneapolis except the tariffs shown as joint proportional tariffs by the Soo Line.

Mr. LYNDE: I understood you to state at the very outset that the through Canadian Lines at Montreal took some action, and I want to know what your authority is for that statement?

Mr. McVANN: I don't know that I can cite you to any particular authority except——

Mr. LYNDE: You don't know anything about it?

Mr. McVANN: Oh, yes, I do know something about it.

Mr. LYNDE: You know you can find no tariffs on file with the Interstate Commerce Commission, you say, filed by the Canadian Pacific Line, that is all, is it not?

Mr. McVANN: I know farther than that, that the Soo Line would not publish these joint proportional through tariffs with all its junctions there in the north if they — any other means of making the through rate.

Mr. LYNDE: That is your inference?

Mr. McVANN: I think that is a fair inference from the facts.

1734 Mr. LYNDE: That we can determine later, but I understood you — testify as to some action at Montreal, and you gave some data for it on the part of the through Canadian Line. I would like to know your authority for that statement?

Mr. McVANN: My recollection of my statement is that the rate from Montreal simply was stated and not the action.

Mr. LYNDE: I may have misunderstood you, but I think you will find when you look it over that I am right. Now, there is only one other question I want to ask. You have enlarged quite freely by way of repetition on the relation of St. Paul and Omaha in this north-western territory. It is in substance the same as you stated in Kansas City the other day, is it not? You have not added anything to it, have you?

Mr. McVANN: I do not recall that I went into that at any great length in Kansas City.

Mr. LYNDE: When you get down, however, to southwestern territory and Nebraska, you suddenly switch and include St. Louis instead of St. Paul.

Mr. McVANN: Yes, sir.

Mr. LYNDE: I again call your attention to the fact that St. Louis is not mentioned in this complaint. You are aware of that now, are you, since I called your attention to that fact?

1735 Mr. McVANN: Since you say so, yes, sir.

Mr. LYNDE: Have you looked at the complaint since I called your attention to that fact?

Mr. McVANN: No.

Mr. LYNDE: The counsel representing the St. Paul interest, has just come in and he said to me that he would like an opportunity to cross examine Mr. McVann perhaps later this afternoon. He has not had an opportunity to go over here what Mr. McVann testified to, and there are some points he may want to ask the gentleman about a little later.

Commissioner CLARK: Have you finished your cross examination?

Mr. LYNDE: Yes.

Commissioner CLARK: It will be agreeable to the Commission to have Mr. McVann subjected to cross examination by any of the parties in interest, to any reasonable extent.

Mr. LYNDE: It will be later this afternoon, that is the only point I wished to raise.

Commissioner CLARK: I think the parties ought to get ready to go ahead with this case and do something. It has been on the docket now for eight or ten months.

1736 Mr. LYNDE: I regret to state that contrary to all rules and principles the Northwestern train was about two hours late this morning.

Commissioner CLARK: Has any other counsel any questions to ask of Mr. McVann at this time?

I understood you to say in answer to Mr. Holden's question a few moments ago that the rates from Omaha to points in Nebraska and Kansas and other southwestern territory were, of course, less than from St. Paul. What do you mean by "of course"?

Mr. McVANN: I mean that the rates from Omaha to points in Nebraska would be naturally less than from St. Paul because it is three hundred and eighty miles from St. Paul to Omaha, and St. Paul has to come either to Omaha or Sioux City to get into Nebraska. It is two hundred and seventy miles from St. Paul to Sioux City, the first point at which St. Paul can enter Nebraska, and three hundred and seventy or three hundred and eighty miles from St. Paul to Omaha, and it is two hundred and seventy miles from St. Paul to Sioux City, and St. Paul can only enter Nebraska through one of three gateways in that direction, that is Sioux City,

1737 California junctions or Omaha. That is what I meant by "of course," that the distance was materially greater from St. Paul, and that St. Paul would have to use some outside line of railway which usually terminates at the Missouri border to get into Nebraska at all.

Commissioner CLARK: Is it your view, Mr. McVann, that a division which a carrier may accept of a through trans-continental rate is a fair measure of the reasonable rate between the points between which it transports that traffic.

Mr. McVANN: I would say most emphatically that my view is that the local rates, for example, from Chicago to the Missouri River cannot be fairly compared with the proportional rates from Chicago to the Missouri River earned on trans-continental business, but that the proportion or portion earned from Chicago to the Missouri River on seaboard business, being itself a portion of a through rate, practically can be compared fairly with the portions earned by the same railroad hauling the freight over the same rails and sometimes in the same cars, performing precisely the same service, that certainly the earnings may take on trans-continental business, for example, can be reasonably compared, not that the one should be exactly the same as the other, but that the one furnished us with practically the only means we have of showing

the excessive character of these proportional rates from Chicago to Omaha on Omaha business or Chicago to Kansas City on Kansas City business.

I believe there is so little that can be brought in in direct evidence to show anything as to the excessiveness of the rates per se on account of the way railroad accounts have always been kept and on account of the fact that the only information accessible to us is naturally we must go into these questions as far as *as far as* we can, to do as much as we can to demonstrate that well nigh impossible proposition of the excessiveness of the rate per se, taken by itself. I think I can fairly say from my experience in handling rates that it is almost impossible to take any rate by itself per se and demonstrate that it is excessive. If you are dealing with a local rate between two points, I think it is fair to compare it with any other local rate between two points under similar conditions for a similar distance.

If you are dealing with a through rate on a proportional haul, I think it is fair to compare that with a proportional through rate and haul if it lies between precisely those two points. I do not say that one should be made absolutely the measure of the other, but I do think it is a fair method of ascertaining whether the first is excessive.

Commissioner CLARK: Just recurring again for a moment to that five cent arbitrary in the trans-continental rate, is it or is it not your understanding that that five cent arbitrary was a terminal toll collected and paid to or collected by and going to the Southern Pacific at its San Francisco Terminal.

Mr. McVANN: I never heard of that terminal at all, Mr. Commissioner, until the case before the Commission involving it came up, and then I understood it to be five cents per ton and not per hundred weight. I don't know, I may be mistaken in that, but my understanding, to make it perfectly clear to you, the understanding I have of the use of that five cents is this. I simply found the information to the effect that after deducting the eastern lines' proportion, the balance of the rate would divide fifteen per cent and eighty-five per cent, after deducting five cents per hundred weight, with no statement whatever to show what became of the five cents per hundred weight. I have searched diligently for information as to what became of it, and not finding anything definitely bearing upon it, I assumed and gave the lines from Chicago to the Missouri River the benefit of my assumption that where a deduction is made before pro rating in a rate of that character, it ordinarily goes to the initial line on the route, that is where no mention is made. If it said deduct on the Mississippi rate from New York to the Mississippi River before pro rating the assumption naturally is with men who are accustomed to making pro rates on that basis, that the five cents goes to the initial line, and in all my calculations I added five cents per hundred weight to the Chicago Missouri River Lines' proportion accruing to them from trans-continental business, and therefore, of course, swelled my figures to that amount, and thereby made them differ from the figures Mr. Bell put in to that extent and I wanted to make it clear on the record

just why it had been done. That is the reason I used the five cents in that way.

Commissioner CLARK: Anything further from this witness?

Mr. BARLOW: Yes. Your theory as to the division of
1741 rates, for instance, proportional rates, would hold good, would it not, in a proportional rate from Chicago to St. Paul applying on Chicago business destined to points west of St. Paul. The same theory would cover that as the through rate from the Atlantic seaboard, would it not?

Mr. McVANN: The theory of the fairness of comparison?

Mr. BARLOW: Yes.

Mr. McVANN: That a proportional rate, if I understand you from Chicago to St. Paul applying only on business destined to territory west of St. Paul might be fairly compared with a proportional rate from Chicago to St. Paul on seaboard business?

Mr. BARLOW: Yes.

Mr. McVANN: I think that would be a fair comparison, yes, sir. It involves precisely the principle we used in our case.

Mr. BARLOW: It involved the same principle?

Mr. McVANN: It involves the same principle, I think so of a haul between two given points over the same rails, involving the same service and in each case being not a local rate, which,
1742 as you know, makes considerable difference in the expense of handling, but in each case a proportion of a through rate. I think it can be fairly done.

Commissioner CLARK: One would involve delivery while the other would not, would it not?

Mr. McVANN: If the one as Mr. Barlow states, from Chicago to St. Paul, if the original business originated at Chicago, the initial line would have to provide facilities for taking care of the freight and the delivery expense—I understand there would be no delivery expense; it would be simply turned over to the line taking it out of St. Paul westward. If there is an expense, the line taking it out will ordinarily assume it.

Commissioner CLARK: But if the traffic is destined to St. Paul or Minneapolis it would have to be delivered?

Mr. McVANN: Delivered through a local terminal, of course.

Commissioner CLARK: Whereas if it was destined beyond, it would be simply turned over to the connecting carrier?

Mr. McVANN: Yes, sir, at St. Paul or Minneapolis. Ordinarily in a case of that kind the receiving line which takes the
1743 freight would pay the expense of getting it there.

Commissioner CLARK: If there is nothing farther from this witness, he may stand aside, subject to further cross examination later in the day.

Witness excused.

1744 Mr. WEBSTER: I would like to say this to the Commission:

I had expected when I left Kansas City to have Mr. Hundley and Mr. Powell of St. Joseph here this morning. I endeavored Saturday afternoon and yesterday to so arrange, but I was told by long distance telephone yesterday afternoon that for local business

reasons these two men would necessarily have to be in St. Joseph this morning. Financial matters, I understood, made it necessary that they should be there, but I was advised that they would come on here this afternoon and be prepared to testify tomorrow morning, if the Commission would be kind enough to give them that time.

In saying this I do not mean to ask that the taking of other testimony by the defendants here shall be postponed at all; I do not mean that. I mean that anything else may go on and simply when they shall arrive here, that I might be permitted to examine them at that time.

I will say further for the information of the Commission and these counsel that the lines of their testimony would be directed more particularly to that which would bear upon the mercantile business in the lines in St. Joseph which they represent, and

1745 would follow very much the lines of the testimony of Messrs. Byrne and Smith, given on Thursday, so I think it would not be a surprise to any person to receive that testimony tomorrow morning, and perhaps would not disturb the progress of the case this afternoon by the taking of other testimony which the defendants may desire to introduce.

I would like also to say one other word: after Mr. Atwood and myself separated in Kansas City, we have not seen each other since, and I supposed we would have an hour together this morning, but owing to the fact that the train on which we came this morning was late, we have not had a moment's conversation, and during the noon recess it might occur to us that there might possibly be some question that we wanted to recall Mr. McVann upon, but should we do so we will notify you after recess, and if not, it will be passed.

I might say another word for the information of the Commission: I was advised this morning by Mr. Scott, of Sioux City, that he desired to introduce some little testimony on his petition of intervention, and that would be rather along the lines, perhaps, of some of the testimony we have introduced, and by going on with the receiving of that sort of testimony, it occurred to me that it would

1746 not result in any delay at all, if this request be granted to the complainants here in the absence of their witnesses.

Commissioner CLARK: Is there any objection on the other side to going ahead with the testimony, with the understanding that the complainants may introduce the testimony of these witnesses later?

Mr. HOLDEN: It seems to me that if Sioux City is going to introduce evidence in support of their petition of intervention, that it would be far more satisfactory to us, or most of us to know what the testimony is that we have to meet. The witnesses from St. Joseph whose testimony is along the same lines, of course there would possibly not be any objection to that coming in out of the regular order.

Commissioner CLARK: That is the point I was asking you about.

Mr. HOLDEN: St. Joseph or Sioux City—

Commissioner CLARK: I asked as to this proposition about going ahead with the understanding that he may introduce the testimony of these St. Joseph people who did not come over to Kansas

1747 City, which was right at their door, tomorrow?

Mr. HOLDEN: Personally when we begin with our testi-

mony I should prefer to have the complainants rest. If the Commission can see any good reason why the regular order should be abandoned, I should be perfectly willing to permit it.

Commissioner CLARK: I don't think it is going too far to say that the Commission does not see any good reason why cases of this kind should not be ready after months and months of opportunity to get ready, and we do not think it is fair to the Commission, with all of the many other things that are demanding attention, when we set a time for hearing these cases and go right to the door of the complainants, go right to their homes, a thousand or twelve hundred, or fifteen hundred miles distance, to hear them, and then find they are not ready to go ahead. We do not see any good reason why the witnesses at St. Joseph should not have taken the trouble to come to Kansas City and testify, but they were not there; they are not here.

Now, we do not propose to stay here the rest of the winter postponing this case from week to week. If we cannot go ahead
1748 and make some progress in the case, we will dispose of it in some other way.

Mr. SCOTT: Sioux City will be ready to offer its testimony at any time; it will not take long.

Commissioner CLARK: Mr. Scott, it is not a question of Sioux City's testimony now. We will hear your testimony. It is just the question of whether or not we are going to be able to go ahead with this case or not. If we cannot, why as I say, we will try and find some other way of disposing of it.

In addition, gentlemen, to what has already been said as to our view of the preparations that ought to be made in these cases, we do not want to draw the line too close now and deprive anybody of an opportunity to present a complete showing of their interests in this matter, but certainly the time will come when this Commission will not tolerate such apparent unpreparedness and indifference to the complaint as has been manifested in many cases that have been recently heard.

Commissioner Harlan and I heard a string of cases in Kansas City a few weeks ago, and without one single exception there was
1749 a glaring lack of preparedness, or any particular effort apparently to get ready to try their cases.

In the absence of a definite objection on the part of the defendants, and with the understanding as stated by Mr. Webster that these witnesses will not testify to anything that would be in the nature of a surprise, we think that we will make—for the reasons stated, we will go ahead and hear the testimony of the Sioux City witnesses and permit the defendants to go on with their testimony. We will hear these two witnesses designated by Mr. Webster, if they are here tomorrow morning. If they are not here tomorrow morning, we will not hear them at all. Mr. Scott, you may introduce your witnesses.

Mr. LYNDE: May it please the Commission, this bring-up a question that I would like to call to the attention of the Commission, outside of the present suggestion. A large part of the proof that has been introduced here relates to a comparison between St.

Louis, Kansas City and Omaha. There is nothing in the complaint that attracted the attention of the defendants to any such basis of complaint here, and I am free to say, speaking for myself, that I

1750 did not come prepared to meet any such claim or contention, and a large number of comparisons are here before the Commission. Your Honors will remember there were about thirty-three of the thirty-seven specific comparisons that are based on the St. Louis rates, and the actual comparison as to the St. Paul rate, which is really a legitimate complaint, stands now in that proportion to thirty-seven, or perhaps a smaller proportion.

It is only fair I think to say now that in order to meet those specific comparisons of rates which we were not expected to be called upon to meet, we may ask a little further time for that specific purpose. I mention that now so as to anticipate the fact that something may be developed later.

That is particularly true of the line I represent, because we do not go to St. Louis and are not interested, particularly interested except in a very indirect way in St. Louis traffic, and we have no preparation whatever to meet something that is really wholly outside of the complaint as it now stands.

1751 Commissioner CLARK: Do you refer to the last——

Mr. LYNDE: To the exhibits.

Commissioner CLARK: To the exhibits that have been introduced?

Mr. LYNDE: Yes, sir; by Mr. McVann.

Commissioner CLARK: Well, would it be practicable to meet that by showings in your briefs?

Mr. LYNDE: No, there are a lot of things we would have to refer to by way of explanation of each one of these. A large portion of it could be done by way of argument in a brief and by way of reference, but I understand that it is not considered good practice for the Commission to refer to tariffs and other matters in briefs and arguments that are not mentioned or called to the attention of the Commission on the hearing. In my judgment it ought to be so.

Commissioner HARLAN: The Commission does not so understand it. The Commission has repeatedly said in the hearing of cases that tariffs on public trials may be referred to if it is desired so to do.

Commissioner CLARK: It is one of the rules of practice that any document on file with the Commission may be referred to.

1752 Mr. LYNDE: I am merely quoting one of my associates on that proposition.

Mr. PEIRCE: I think I recollect of a rule of the Commission made not so very long ago, at least they presented me with a rule of the Commission to the effect that any tariffs or documents on file with the Commission would not be received as evidence unless called to the attention of the Commission during the taking of the evidence.

Commissioner CLARK: Mr. Scott, you may call your witness now.

Mr. SCOTT: Will you take the stand, Mr. Tackaberry?

W. E. TACKABERRY, called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct examination.

Mr. SCOTT: State your full name and residence.

Mr. TACKABERRY: W. E. Tackaberry, Sioux City.

Mr. SCOTT: In what business are you engaged?

1753 Mr. TACKABERRY: Wholesale grocery business.

Mr. SCOTT: What is the name of your firm?

Mr. TACKABERRY: William E. Tackaberry Company.

Commissioner CLARK: You will have to speak a little louder, Mr. Tackaberry.

Mr. SCOTT: What is the approximate population of the city of Sioux City?

Mr. TACKABERRY: About fifty thousand.

Mr. SCOTT: What jobbing interests and concerns are located and doing business at that point?

Mr. TACKABERRY: We have four wholesale grocery houses, two hardware houses, one heavy hardware house, one dry goods, one boots and shoes—three candy manufacturers, two cracker jobbing concerns, four green fruit houses, and a good many others in general lines.

Mr. SCOTT: Throughout what territory do these jobbers distribute and sell their goods?

Mr. TACKABERRY: In northwest Iowa, southwest Minnesota, South Dakota and Nebraska and northern Nebraska and a portion of Wyoming.

Mr. SCOTT: And with what other cities would they come in competition in that territory?

1754 Mr. TACKABERRY: Well, in Dakota they come in competition, of course, with Chicago, Omaha, St. Paul and Minneapolis and other intermediate jobbing points.

Mr. SCOTT: With what city is your sharpest competition?

Mr. TACKABERRY: Well, I would say the sharpest competition is with Omaha, of course, on the south, and on the north, with Minneapolis and St. Paul.

Mr. SCOTT: What if any obstacle do the wholesalers and jobbers in Sioux City encounter in their competition in this territory with the cities of St. Paul and Minneapolis?

Mr. TACKABERRY: With relation to the matter before asked, the question of rates in that territory?

Mr. SCOTT: What is the extent of that obstacle?

Mr. TACKABERRY: Well, the extent of the obstacle is approximately the same condition as it is in other Missouri River points, that is, our rate out affects it more keenly than at the south.

Mr. SCOTT: Sioux City takes the same rate as Omaha, does it not?

Mr. TACKABERRY: Our rate in is the same as Omaha.

1755 Mr. SCOTT: And the difference, you understand, between the St. Paul and Minneapolis rate and the Sioux City rate is 32 cents?

Mr. TACKABERRY: Thirty-two cents on first class.

Mr. SCOTT: Now, are you able to state or describe the rates be-

tween St. Paul and Sioux City break within that territory on approximately an equal basis?

Mr. TACKABERRY: Taking first class, which the railroad men, I understand, quote usually—

Mr. SCOTT: Well, the question is, could you tell?

Mr. TACKABERRY: Yes, sir; I could give it approximately.

Mr. SCOTT: Now, commencing at a point approximately east of Sioux City and circling northward and westward to a point approximately west of Sioux City, and describing the line by giving the names of the points, I wish you would answer the question.

Mr. TACKABERRY: Well, the rates would even up approximately, within a cent or two one way or the other, beginning for instance, at Storm Lake, which is 80 miles east of us on the Illinois Central.

Mr. SCOTT: And on what other road?

1756 Mr. TACKABERRY: And on the M. & St. L., and the Milwaukee comes in there from the south, too; M. & St. L. from St. Paul to Spencer, Iowa, Spencer is also on the Milwaukee, and on the M. & St. L.

Mr. SCOTT: Give the relative distances from St. Paul and Sioux City to those points?

Mr. TACKABERRY: The distance from Sioux City to Storm Lake is eighty or eighty-one miles. I can give those exactly.

Mr. SCOTT: Give it exactly.

Mr. TACKABERRY: The distance from Sioux City to Storm Lake is eighty-two miles, from St. Paul two hundred and thirty-four miles; Spencer, Iowa, from Sioux City on is sixteen miles, and from St. Paul one hundred and ninety-seven miles. Sibley—

Mr. SCOTT: What state?

Mr. TACKABERRY: Iowa. From Sioux City seventy-three miles, and from St. Paul one hundred and ninety-five miles. Mills, Minnesota, which is virtually on the line from St. Paul, two hundred and forty-seven miles; from Sioux City eighty miles. Canton, South

1757 Dakota, from St. Paul three hundred and eighteen miles; from Sioux City seventy-one miles. Following into Dakota

at Parker, three hundred and forty-seven miles from St. Paul and from Sioux City one hundred miles. Yankton, South Dakota, from St. Paul three hundred and eleven miles; and from Sioux City sixty-one miles.

Mr. SCOTT: Yankton is located in what direction from Sioux City?

Mr. TACKABERRY: Why, a little north of west.

Mr. SCOTT: And on the Missouri River Nebraska line?

Mr. TACKABERRY: On the Missouri River line, yes, sir.

Mr. SCOTT: You say that a line drawn between the points that you have named, would practically circumscribe the territory within which Sioux City can meet St. Paul on an equal basis of rates?

Mr. TACKABERRY: Yes, figuring the rates through against that 32 cent differential on first class.

Mr. SCOTT: Now, are there other points you have in mind near this line where the discrimination against Sioux City and in favor of St. Paul exceeds the amount of the 32 cents differential?

Mr. TACKABERRY: As you go north the discrimination
1758 increases. Take it at Elkton, South Dakota, the mileage from
Sioux City is one hundred and fifty miles and from St. Paul
it is two hundred and twenty one miles, and the differential is
against us five cents. That is, our rate for a 150 mile haul is sixty-
eight cents, while St. Paul's rate with a haul of 221 miles is sixty-
three cents; five cents higher from Sioux City than it is from St.
Paul.

Mr. SCOTT: Now, you add the thirty-two cents and the five
cents—

Mr. TACKABERRY: Yes.

Mr. SCOTT: To get the total difference?

Mr. TACKABERRY: Yes; that is aside from the thirty-two cents,
that is the local out.

Mr. SCOTT: You say that after crossing the line as you progress
northward, the difference against Sioux City and in favor of St.
Paul increases?

Mr. TACKABERRY: Yes, sir.

Mr. SCOTT: Now, what effect, in your opinion, would a reduction
of the Sioux City through rate to such a point as will put it upon
an equal basis with through rates with St. Paul, have upon
1759 the wholesale interests of Sioux City?

Mr. TACKABERRY: In the territory affected?

Mr. SCOTT: Yes.

Mr. TACKABERRY: Why, it certainly would give Sioux City an
opportunity to go in there on a fair basis and would naturally make
it strong competitive ground.

Mr. SCOTT: What effect, in your judgment, would it have or
tend to have upon the prices of commodities to retailers and to the
consumers in that direction?

Mr. TACKABERRY: Well, I have found where the strongest com-
petition was there were a little less prices.

Mr. SCOTT: Then the adjustment of rates more equally would
tend to lower the prices in that territory?

Mr. TACKABERRY: Yes.

Mr. SCOTT: What is the effect as to whether the wholesalers and
jobbers of Sioux City are now covering territory in competition with
St. Paul, which, by reason of the discrepancy in rates, they are
able to make little or no profit on?

Mr. TACKABERRY: Well, there is quite a good deal of territory
of that character.

1760 Mr. SCOTT: And what motive or object have the merchants
and jobbers of Sioux City in covering such territory where
they can make little or no profit?

Mr. TACKABERRY: Well, the average jobber, as I take it, naturally
feels that where a territory is nearer him than another market,
he ought to have a fair interest or share of that business in that
field, and he attempts to establish himself, even if he has to work
against a handicap in the field, in the hope that the matter would
be improved, the conditions improved.

Now, you take some of the local rates up there, and the matter

has been before several of the railroads interested; we have felt that those rates are too high as compared with the rates from St. Paul, and we have had the matter before several of them somewhat on this plan, and have not been able to secure any action in our favor.

Mr. SCOTT: You spoke of Elkton, too. I will ask you whether the conditions there exist purely by reason of the inter-State rates, or whether any intra straight tariff has any influence upon that situation?

Mr. TACKABERRY: At Elkton?

1761 Mr. SCOTT: Yes.

Mr. TACKABERRY: No, the rate from Sioux City is an inter-state rate and the rate from St. Paul is also an inter-state rate. The local state rate has nothing to do with that.

Mr. SCOTT: Now, this thirty-two cent difference in favor of St. Paul and against Sioux City, affects all of the retail interests of Sioux City, does it not?

Mr. TACKABERRY: They have to pay that.

Mr. SCOTT: And there are very extensive retail houses and department houses there, too, are there not?

Mr. TACKABERRY: Oh, yes, in dry goods and other lines.

Mr. SCOTT: How many large department houses?

Mr. TACKABERRY: There are three large department houses.

Mr. SCOTT: I believe that is all.

Cross-examination:

Mr. LYNDE: How far is Sioux Falls from Sioux City?

Mr. TACKABERRY: Ninety-one or ninety-two miles, I think.

1762 Mr. LYNDE: That is a jobbing point, too, is it not?

Mr. TACKABERRY: Yes; they do some jobbing up there.

Mr. LYNDE: There is quite sharp competition between Sioux Falls and Sioux City, is there not?

Mr. TACKABERRY: Oh, there is some competition, yes, sir.

Mr. LYNDE: The Sioux City and Sioux Falls jobbers have from time to time gone before the Commission, have they not, with respect to rates in and out?

Mr. TACKABERRY: I think there has been one case before the Commission, yes.

Mr. LYNDE: Well, wasn't there one very recently brought by—

Mr. TACKABERRY: There were some actions brought, I don't know that they ever came to a hearing before the Railway Commission.

Mr. LYNDE: Wasn't there a petition filed before the Inter-State Commerce Commission?

Mr. TACKABERRY: Yes, there was a case filed with the Inter-State Commerce Commission.

Mr. LYNDE: By the Chamber of Commerce, or whatever
1763 the title is of your organization, of Sioux City?

Mr. TACKABERRY: Yes, sir.

Mr. LYNDE: You recall that fact, do you?

Mr. TACKABERRY: Yes, I recall that there was such a case.

Mr. LYNDE: And in that case Sioux Falls intervened, did they

not, and they made a claim as against Sioux City, as against the Sioux City basis, did they not?

Mr. TACKABERRY: There was a contention between Sioux Falls and Sioux City on a question of rates.

Mr. LYNDE: Some time ago the Interstate Commerce Commission fixed a basis of rate as between Sioux Falls and Sioux City by giving Sioux City an advantage of a certain percentage as against Sioux Falls, did it not?

Mr. TACKABERRY: Yes.

Mr. LYNDE: That is to say, the rate to Sioux Falls is 1.4 per cent of the rate to Sioux City?

Mr. TACKABERRY: Yes.

Mr. LYNDE: Now, both Sioux Falls and Sioux City have rates from Duluth, do they not?

Mr. TACKABERRY: Rates from Duluth?

Mr. LYNDE: Yes.

1764 Mr. TACKABERRY: Rates from Duluth?

Mr. LYNDE: Yes.

Mr. TACKABERRY: Why, I suppose so. I couldn't quote those rates or attempt to state them offhand.

Mr. LYNDE: Isn't it a fact that the basis of rates from Duluth to Sioux City and to Sioux Falls, perhaps there being a little higher rate to that point, is the Chicago rate?

Mr. TACKABERRY: I couldn't exactly say whether it is the Chicago rate or not. Of course my—Let me explain: simply my acquaintance with the rate arises from my business. I have very little business arising at Duluth.

Mr. LYNDE: Yes.

Mr. TACKABERRY: The business that comes by that gateway is east-bound business, bound from the east.

Mr. LYNDE: I didn't get that. Will you give me that last again?

Mr. TACKABERRY: Merchandise that I buy coming through that gateway is bought in the east; it is sometimes shipped over the lake and rail route via Duluth.

Mr. LYNDE: Well, that is true, isn't it, that merchandise comes to Sioux City through the Duluth gateway, coming from the seaboard? Isn't that true?

Mr. TACKABERRY: Yes, some of it does.

Mr. LYNDE: What is your business, please?

Mr. TACKABERRY: Wholesale grocery business.

Mr. LYNDE: Do you yourself receive goods through that gateway?

Mr. TACKABERRY: We have, yes, some.

Mr. LYNDE: And the rate—well, you say you don't know as to the rate?

Mr. TACKABERRY: The local rate from Duluth out I don't know the figures.

Mr. LYNDE: You don't know the basis or relation between that rate and the rate to Chicago?

Mr. TACKABERRY: On through eastern business they are the same, as I understand it.

Mr. LYNDE: That is my understanding, exactly. Now that is true also of all other lake ports, Milwaukee and Manitowoc and the other lake ports? They have the same basis of rate which Sioux City and Sioux Falls have, as Chicago has?

Mr. TACKABERRY: Milwaukee and Chicago have; I don't know as to Manitowoc. I never looked that point up.

1766 Mr. LYNDE: So, as a matter of fact, when you buy from the seaboard and ship through Duluth to Sioux City, you get the same rate as goes through the Chicago gateway?

Mr. TACKABERRY: I understand it is the same.

Mr. LYNDE: You speak of the effect of the reduction of the rate to Sioux City; in what territory would that reduction be shown, would the effect of that reduction be shown? Would it extend your territory? Is that your idea?

Mr. TACKABERRY: Why, it would be felt in all our territory.

Mr. LYNDE: I know, but how far would it go? You have mentioned a circumscribed territory running to Yankton on the southwest and Storm Lake on the east; would you expect that the reduction such as you ask—such as you were asked with reference to, would extend your territory beyond those limits?

Mr. TACKABERRY: It would extend the line—that limit that I spoke of there, that line limit circumscribed from Storm Lake north and around to Yankton, is the approximate line at which the rates would divide; that is, our rates to those points would be equal
1767 to the through rate from the east around by St. Paul. If the reduction was made, that line would be extended and broadened, of course.

Mr. LYNDE: That is at the present time, you mean?

Mr. TACKABERRY: Yes.

Mr. LYNDE: That is where the rates break now?

Mr. TACKABERRY: Yes, approximately.

Mr. LYNDE: Now, if this reduction was given to Sioux City of course that would extend the limit of your territory.

Mr. TACKABERRY: Yes.

Mr. LYNDE: Do you know what the all lake and rail rate is to Duluth?

Mr. TACKABERRY: The all rail rate, no, sir, I do not.

Mr. LYNDE: No, not the all rail rate, but the lake and rail rate.

Mr. TACKABERRY: To Duluth?

Mr. LYNDE: Yes.

Mr. TACKABERRY: No, I don't know. I couldn't speak it off-hand.

Mr. LYNDE: So of course, the effect of a reduction such
1768 as you speak of would be to extend this line in favor of Sioux City as against St. Paul just as far as 32 cents would carry it, is that the idea?

Mr. TACKABERRY: You mean that it would extend the territory?

Mr. LYNDE: Yes.

Mr. TACKABERRY: Under which we would be on an even basis?

Mr. LYNDE: Well, suppose as you get nearer within that territory,

as you get nearer Sioux City, you are on something more than an even basis, aren't you?

Mr. TACKABERRY: Yes; if we are right in town, we are. You cannot much more than get out of town now. Seventy-five miles is not very far away for a jobber.

Mr. LYNDE: You understand that of course you are taking away that much from St. Paul as it now stands?

Mr. TACKABERRY: Yes; because that doesn't belong to them.

Mr. LYNDE: I didn't ask you that question.

Mr. TACKABERRY: Excuse me then, for my saying it.

Mr. LYNDE: Well, we will just go along with the questions. You can suggest these things later. Now, when you ship through
1769 the Duluth gateway, I presume you pay the lake and rail rate, do you not, on your shipments?

Mr. TACKABERRY: Yes, sir.

Mr. LYNDE: How much lower is that than the all rail rate?

Mr. TACKABERRY: On first class I think it is ten cents.

Mr. LYNDE: Well, isn't there, as a matter of fact, somewhere in the neighborhood of between thirty and forty cents difference?

Mr. TACKABERRY: On first class lines, yes.

Mr. TACKABERRY: That is the difference between the all rail rate from the seaboard to the Missouri river, and the local rate from the seaboard to the Missouri river.

Mr. LYNDE: But take it another way: the all rail rate from Duluth and the lake and rail rate from Duluth.

Mr. TACKABERRY: I don't know what it is to Duluth; I think it is ten cents to the Missouri river.

Mr. LYNDE: Well, we can readily tell that; that is a matter of computation.

Mr. TACKABERRY: Yes; you gentlemen are supposed to do that; but I think that is the figure, I think it is about ten cents,
1770 in all.

Mr. ELLIS: Mr. Tackaberry, what will your sales amount to in a year?

Mr. TACKABERRY: Our own individual sales, do you mean, or the city's sales?

Mr. ELLIS: No, your own sales?

Mr. TACKABERRY: Our sales will run about a million dollars.

Mr. ELLIS: Above a million dollars?

Mr. TACKABERRY: Yes; about a million and a quarter.

Mr. ELLIS: What will your freight on the stuff in amount to in a year?

Mr. TACKABERRY: I don't know as I could tell that offhand without referring to the records. I could not quote that figure offhand.

Mr. ELLIS: Can you supply it?

Mr. TACKABERRY: How?

Mr. ELLIS: Can you supply it later for the record?

Mr. TACKABERRY: Yes, I can: Just a moment now——

Mr. ELLIS: I would rather have the absolute figures.

1771 Mr. TACKABERRY: I may be able to give you what it was last month.

Mr. ELLIS: I will tell you what I would rather do; I would rather have you supply Mr. Scott your sales and your inbound freight for a year, accurately. That would be better.

Now, what items in a general way of the grocery trade, do you know of—

Mr. TACKABERRY: If you care for it for one month, I can give it to you now.

Mr. ELLIS: Have you the sales for that month, also?

Mr. TACKABERRY: I know the sales for the month of October were \$105,000, and the freight paid for that month was \$3,270.

Commissioner CLARK: Inbound?

Mr. TACKABERRY: Inbound freight, yes, sir. The outbound freight don't amount to anything with us.

Mr. ELLIS: Now, the outbound freight added to the inbound freight probably would make the freight on these commodities not far from four per cent of the wholesale price, would they not?

1772 Mr. TACKABERRY: It would be more than that, I would say off-hand.

Mr. ELLIS: You only ship about eighty miles out, you say?

Mr. TACKABERRY: No, I beg our pardon, you misunderstood me.

Mr. ELLIS: Oh, you ship farther?

Mr. TACKABERRY: Yes, sir.

Mr. ELLIS: But that is far as you ship on an equal basis?

Mr. TACKABERRY: We ship into the hills and some into Wyoming.

Mr. ELLIS: And here you equalize the freight?

Mr. TACKABERRY: Our rates in that field, in the hills and Wyoming are the same as Omaha.

Mr. ELLIS: Well, do you ship beyond this limit that you have spoken of?

Mr. TACKABERRY: Yes.

Mr. ELLIS: You equalize your freight there?

Mr. TACKABERRY: In some cases we do.

Mr. ELLIS: And in other cases?

Mr. TACKABERRY: We do not.

Mr. ELLIS: Your location gives you the trade?

1773 Mr. TACKABERRY: Yes, quick service is the big item with us in our line.

Mr. ELLIS: Well, now take the grocery trade as a whole, what figure does the freight cut in the retail price of the commodity?

Mr. TACKABERRY: The freight—oh, it is quite a factor.

Mr. ELLIS: In the retail price?

Mr. TACKABERRY: In the case of the cost, yes, sir, it is quite a factor.

Mr. ELLIS: In the retail price?

Mr. TACKABERRY: To the consumer, you mean?

Mr. ELLIS: Yes, take a can of canned peas, what difference would this change in freight you are asking for make in the price to the consumer of a can of canned peas retailing, we will say, at twelve cents?

Mr. TACKABERRY: I don't know as it would any:

Mr. ELLIS: How?

Mr. TACKABERRY: I don't know as it would any.

Mr. ELLIS: Now, outside of sugar, what commodities that you handle would the price be affected by a change of freight rates such as you ask for here?

Mr. TACKABERRY: To the consuming trade?

1774 Mr. ELLIS: To the consuming trade?

Mr. TACKABERRY: Oh, I don't know; there would not be very much.

Mr. ELLIS: Well, do you know of any, can you specify any commodities that the freight would affect the price on them to the consumer, with the possible exception of sugar?

Mr. TACKABERRY: No, I don't know as it would, because the margin on the part of the retailer is enough so that he has to overcome that.

Mr. ELLIS: As a matter of trade practice the freight is not figured into the retail prices of groceries, is it?

Mr. TACKABERRY: Oh, yes, it is, the freight on groceries is one of the

Mr. ELLIS: It is not figured into the retail price?

Mr. TACKABERRY: It is figured in the retail price, but the discrepancy between five cents a hundred in a rate would not be able to be figured in the retail price.

Mr. ELLIS: Nor would thirty cents a hundred be able to be figured in the retail price, would it?

Mr. TACKABERRY: It would on some items.

Mr. ELLIS: That is what I want to get at. What items
1775 could it be figured on?

Mr. TACKABERRY: It might on some canned goods. You take a case where the market on canned tomatoes was moving at a close figure and thirty cents—

Mr. ELLIS: Now give us what you mean by a close figure?

Mr. TACKABERRY: Well, if tomatoes cost a dollar to lay them on the river as they do today—

Mr. ELLIS: You mean the freight is a dollar?

Mr. TACKABERRY: No, the total cost, including freight was a dollar laid in and the retailer still hangs onto his ten cent price which means a dollar and twenty cents, he is getting twenty per cent out of that. If the rate was raised thirty cents a hundred, it would mean it would cost me a dollar ten and he would have to pay a dollar twenty. That would force it up to a twelve and a half cent or a fifteen cent item.

Mr. ELLIS: Suppose it was lowered thirty cents. Now figure out the result.

Mr. TACKABERRY: If the market was a dollar and ten and we were getting a dollar fifteen and it was lowered, it would reduce it from twelve and a half cents to a ten cent item.

1776 Mr. ELLIS: And to what extent in the grocery trade is that true? How much of the groceries are sold as close as that?

Mr. TACKABERRY: Oh, there isn't any great percentage, I wouldn't say.

Mr. ELLIS: It is the exception, isn't it?

Mr. TACKABERRY: Yes.

Mr. ELLIS: That is an exception?

Mr. TACKABERRY: Yes, fairly an exception, because the average retailer sells on a margin of twenty per cent.

Mr. ELLIS: Now, what effect would the change in rates you are asking for have upon the wholesale price?

Mr. TACKABERRY: Why, it would affect the wholesale price materially.

Mr. ELLIS: What?

Mr. TACKABERRY: It would affect the wholesale price materially.

Mr. ELLIS: Well, on what commodities, on everything?

Mr. TACKABERRY: Virtually everything, yes, sir, of course, except stuff that is sold by the manufacturers delivered to us, in which event they would absorb the reduction.

1777 Mr. ELLIS: You would sell to the retailer cheaper than now?

Mr. TACKABERRY: Yes, sir, if my tomatoes cost me ninety cents instead of a dollar, I would get a dollar for them.

Mr. ELLIS: That is all.

Redirect examination:

Mr. SCOTT: What proportion of your shipments from the Atlantic seaport come by lake and rail rate as compared with those coming by all rail?

Mr. TACKABERRY: I don't know. There is quite a proportion of them; quite a good deal of it shipped in the summer time, quite a little tonnage, but the steady shipments do not come that way. Take all our plug tobaccos and our coffees and fancy goods, high grade goods, cigars, and all that class of stuff, always come all rail.

Mr. SCOTT: That class of goods requiring quick service comes all rail?

Mr. TACKABERRY: Yes, and stuff that does not require quick service, lots of it comes all rail. I would not ship cigars that way or tobacco, that is lake and rail. I would not ship them lake and rail at all.

1778 Mr. SCOTT: And I believe you stated that the all rail route and rate had not meet and do not now meet the lake and rail route rate.

Mr. TACKABERRY: No, they are not as cheap as the lake and rail rates. I never knew them to be.

Mr. SCOTT: I will ask you this: Is it not true that most of the freight in your line that comes through Duluth is canned goods and low class freight?

Mr. TACKABERRY: Well, there is very little moved through Duluth with us, and it is low grade with us, that is low class, sixth class and virtually all we have.

Mr. SCOTT: Then as compared with the freight you have by all rail route, the lake and rail part is small?

Mr. TACKABERRY: Yes.

Mr. SCOTT: And is it true that as regards all the merchants in your vicinity very little high class goods come through Duluth?

Mr. TACKABERRY: I think that is true; in fact as far as we are concerned, a very little stuff comes by Duluth, take it all in all.

Mr. SCOTT: That is all.

1779 Recross-examination.

Mr. ELLIS: You spoke of tobacco. How did you say that comes?

Mr. TACKABERRY: That comes all rail.

Mr. ELLIS: And do you handle a good deal of tobacco?

Mr. TACKABERRY: Tobacco I would say was between ten and twelve per cent of our business. Pretty big, isn't it?

Mr. ELLIS: What effect on the price would this change in rate have on tobacco?

Mr. TACKABERRY: It would not have any that I know of.

Mr. ELLIS: The price of that is fixed when you get it?

Mr. TACKABERRY: Tobaccos are sold by the manufacturers laid down, freight prepaid.

Mr. ELLIS: Well, the price at which you can sell it is fixed when you buy it, isn't it?

Mr. TACKABERRY: No, I sell it for what I please, to my sorrow sometimes.

Mr. ELLIS: Like a man who could get to work any time he wanted to if he got there at seven o'clock. I think that is all.

Mr. BARLOW: I would like to ask a question, please.

Commissioner CLARK: Mr. Barlow.

1780 Mr. BARLOW: I understand that the merchants of Sioux City desire to ship goods from New York and other eastern points into Sioux City and then re-ship them to Elkton, say, one of the points which you mentioned, at the same rate as the same movement is made through St. Paul.

Mr. TACKABERRY: Yes, sir; no reason why we should not be able to.

Mr. BARLOW: Well, assuming that you cannot, and I understand you cannot, do you feel that that is a discrimination against the merchants of Sioux City?

Mr. TACKABERRY: I think so.

Mr. BARLOW: Then if Chicago cannot do it, would it be a discrimination against Chicago?

Mr. TACKABERRY: It would, I suppose.

Mr. BARLOW: Thank you.

Mr. TACKABERRY: May I—all right.

Mr. SCOTT: You may explain that, if you desire.

Mr. TACKABERRY: I would like to have a look at the Chicago rate.

Commissioner CLARK: Any further questions of this witness?

1781 Mr. BUTLER: I would like to ask him a question in behalf of the Twin Cities.

Commissioner CLARK: Will you state your name so that the reporter may get it in the record?

Mr. BUTLER: Pierce Butler, of Hall, Butler & Mitchell, St. Paul, Minnesota. The Chicago wholesale grocery houses compete sharply with you in the territory in northern and especially northwestern Iowa and southeast Minnesota, do they not?

Mr. TACKABERRY: We have some competition with them in Iowa, yes, sir.

Mr. BUTLER: Now, are you able to indicate to the Commission what points, such as you did to your own counsel, where you break even with Chicago, giving the same comparison as between you and the Chicago jobbers as you did between you and the Twin City jobbers. I mean now in southern Minnesota and Iowa.

Mr. TACKABERRY: Well. I couldn't do so off-hand. I have not gone over the matter at all.

Mr. BUTLER: You have not made a comparison. Now, do you happen to recall how it would be at Storm Lake?

Mr. TACKABERRY: No, I would have to figure it.

1782 Mr. BUTLER: Or at Sibley?

Mr. TACKABERRY: No, I haven't gone over the Chicago rates at any of these points.

Mr. BUTLER: What I am trying to get at is, do you know whether you are on even terms at Storm Lake with Chicago, or Sibley, for instance? You say that is the meeting point between you and the Twin Cities.

Mr. TACKABERRY: Yes, that is about the point where the rate would divide on the through rate.

Mr. BUTLER: Yes, as between you and the Twin Cities.

Mr. TACKABERRY: Yes.

Mr. BUTLER: Now, who has the advantage in Storm Lake or Sibley, you or Chicago?

Mr. TACKABERRY: I haven't looked it up; I don't know. I could not tell you anything about it off-hand at all.

Mr. BUTLER: Do you know where the Twin Cities and Chicago meet on even terms?

Mr. TACKABERRY: No, sir.

Mr. BUTLER: As far north as Sibley, isn't it? or that vicinity?

Mr. TACKABERRY: I don't know, I say.

Mr. BUTLER: I think that is all.

1783 Commissioner CLARK: You may stand aside. Is that all your witnesses, Mr. Scott?

Mr. SCOTT: I think that is all.

Commissioner CLARK: We will now take a recess until two o'clock.

Whereupon a recess was taken until two o'clock P. M. of the same day.

1784

CHICAGO, ILLINOIS, November 25, 1907.

At 2 o'clock P. M. the Commission met pursuant to recess. Present same as before.

Mr. SCOTT: The witness I called just before lunch desires to make a correction.

W. E. TACKABERRY, recalled for further examination, testified as follows:

Mr. SCOTT: Do you desire to correct any statement you made in reference to the amount of freight, as given in your testimony before lunch?

Mr. TACKABERRY: I would say this: Mr. Ellis' question relative to the freight we paid, and my answer, the amount given in the answer indicates only the amount of charges paid by us at the terminal. Now, there are fully 40 per cent of the goods which we receive that are sold delivered, and charges are prepaid by the shippers, so that amount would not show any of these charges.

1785 Mr. SCOTT: Now, I would like to ask you one more question. How does the total amount of freights paid by you compare with all other expenses of conducting your business?

Mr. TACKABERRY: Well, the total amount of freight on the goods we receive—not paid by us, but paid by us or prepaid—would amount to very nearly, I think, the cost of our doing business.

Mr. SCOTT: It would equal the cost of all other matters?

Mr. TACKABERRY: Very nearly, in the rough, I would say, it would be equal.

Mr. SCOTT: And the amount of freight paid by the shipper to you, prepaid, is indirectly paid by you in price?

Mr. TACKABERRY: Yes, included in the price.

Mr. BARLOW: In the Memphis-Arkansas case, if I recall it correctly, it was testified that about 40 per cent of the grocery business was controlled by a so-called trust, and that the price of delivery was substantially the same at all jobbing centers; is that substantially the situation as to your point?

Mr. TACKABERRY: I would not think—the comparative cost
1786 is approximately the same; you take it for instance in sugars, which are 25 per cent of our sales in dollars and cents; the cost of sugar is based on New Orleans or New York, plus the freight rate, irrespective of the rate from the best refineries, which is a large percentage of our consumption, beet sugar. For instance, they sell Sioux City on New Orleans price, less 10 cents differential, irrespective of the rate. The same applies at Minneapolis and St. Paul, I think.

Mr. BARLOW: You think twenty-five per cent of your business is sugar? That is a trust, or so-called trust?

Mr. TACKABERRY: Nominally, yes, sir.

Mr. BARLOW: Substantially the price for distribution of sugar at your city is approximately the same as at St. Louis, or St. Paul, or any of those points?

Mr. TACKABERRY: Yes, sir.

Mr. BARLOW: You said tobacco was about eleven per cent, substantially?

Mr. TACKABERRY: Eleven to twelve.

Mr. BARLOW: That is a trust product, so-called?

Mr. TACKABERRY: Yes, sir.

1787 Mr. BARLOW: I do not like the word "trust" but it is used. Now, the price of tobacco sold at the various jobbing centers is substantially the same, regardless of the freight rate?

Mr. TACKABERRY: It is.

Mr. BARLOW: Now, there are other commodities; we have now 25, 33 and 37½ per cent, while the testimony in the Memphis-Arkansas case was about 40 per cent, so it would be fair to assume in your case that about 40 per cent of the grocery business was delivered to you at substantially the same price as at the other points?

Mr. TACKABERRY: I think it would be about that.

(Witness excused.)

1788 W. B. BIDDLE, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. PEIRCE: What is your present position?

Mr. BIDDLE: Third vice president of the Rock Island Railroad, in charge of traffic and commercial relations, and those things.

Mr. PEIRCE: How long have you been connected with the traffic department of railroads in this country?

Mr. BIDDLE: About twenty-eight years.

Mr. PEIRCE: What was your position, what roads, were you connected with before you went with the Rock Island?

Mr. BIDDLE: The Santa Fe.

Mr. PEIRCE: In what position?

Mr. BIDDLE: Finally as Freight Traffic Manager.

Mr. PEIRCE: You are familiar with the conditions of the rate adjustments in the west which are involved in this complaint, are you?

Mr. BIDDLE: Yes, sir.

1789 Mr. PEIRCE: The complaint prays here that the defendants be ordered to publish within a reasonable time through rates from the Atlantic seaboard to Kansas City, St. Joseph and Omaha and put said rates in force, and that such rates shall not exceed \$1.10, \$.95¼, \$.72½, \$.51½ and \$.44 per hundred pounds for the five classes aforesaid, respectively, subject to official classification; that is the prayer of this complaint. The object of putting in those rates would be a large reduction to the Missouri River, would it not?

Mr. BIDDLE: Yes.

Mr. PEIRCE: To those particular points?

Mr. BIDDLE: Yes.

Mr. PEIRCE: Now, if through rates, as prayed for, were put in to the Missouri River at the points complaining here, would that have

any effect on the present adjustment of rates existing throughout the country?

Mr. BIDDLE: Most assuredly.

Mr. PEIRCE: I will ask you to outline as briefly as possible, but rather completely, just what the effect of this proposed readjustment of rates to the Missouri River would be.

Mr. BIDDLE: Well, the effect of a proposition of that kind 1790 is so far reaching that neither I nor any one else could tell what it would mean or where it would land. I can tell you some of the effects of it as I see it, but as I say, with any investigation that I have been able to make of it, or any knowledge that I can bring to bear upon it, I would not undertake to say now what the effect of it might be. Perhaps the most important thing and as appealing to a railroad man who is interested in it, is the effect on your revenue. It not only reduces your rates directly to the Missouri River, but it reduces or would reduce your rates not only into the territory, a very large part of the territory west of the Missouri River, but also by the application of the full section of the law, would reduce your rates at many intermediate points. What the measure of that would be, no man can tell without taking actual business and figuring.

While the reduction is confined to certain class rates, there is a relation between class and commodity rates. It is not a fixed one, but each has a direct bearing on the other. It would undoubtedly change and reduce the rates on a very large number of commodities.

In fact, I should say off-hand that it would have an effect on 1791 practically all of the west-bound rates that are carried.

So much for the rate features of it and the effect on the revenue. It would disturb the relationship that exists today and that has always existed ever since joint or through tariffs have been in effect, so far as I know, between all the important markets and centers in the country and distributing points—well, there are practically few exceptions—I don't know of any exception of any importance, market centers that would not be affected by that change in rates.

It would mean, as I understand it, taking the basis on which the computation has been arrived at, the adoption of practically a mileage scale of rates in practically all of the territory west of Chicago and St. Louis. That is my understanding of the basis that is used in the computation and the argument upon which it is based. It would undoubtedly result in changing the adjustment of rates in all the territory west of the Mississippi River where the rates are today based on the sums of the locals to and from the Missouri River. The application of the principle referred to of taking the proportional rate or the part of a through rate is accepted by one carrier

1792 as I recollect it, the illustration used was thirty-three cents as the earnings between Chicago and the Missouri River on a first class rate from New York to San Francisco. In the first place, it is no illustration whatever. I suppose ninety to ninety-five per cent possibly of the west bound business to the Pacific Coast is handled on commodity rates, or if it is not as large a proportion as

that, it is very large. The proportion of what is handled on class rates as divided between first class and the other classes would be infinitesimal for the first class rate, consequently I say that is no illustration.

Again, there is no reason why a first class rate should be taken as the example. There are innumerable commodities originating east of Chicago on which through rates are made to the Pacific Coast and on which the earnings to the lines between Chicago and the Missouri River are not perhaps over ten or twelve cents per hundred pounds. Now, the reason for the making of those rates is this: no one contends that those rates are reasonable or compensatory in themselves, but the measure of the rate that can be secured from the Atlantic

Seaboard to California is measured by water competition; 1793 the through rate is presumably intelligently fixed by people who have knowledge of that situation and having determined what you can get as a freight rate, it is simply a matter of division or arrangement or agreement between the carriers as to what each one of them will accept as their proportion. Much of that business is not compensatory, taken by itself. No one would undertake to defend the making of those rates; and if the principle is to be applied that any rate which was made shall be used as the measure of other rates, it simply means that there would be no line engaged in Pacific Coast traffic on the rates that will move the business. No one could afford to do it. Now, briefly, those are some of the effects as I see them on the application of this proposition to reduce these rates.

Mr. PEIRCE: Now, Mr. Biddle, on that point, while you say that some of these Pacific Coast rates are not compensatory in themselves, or are very reasonably low, the making of those rates have other effects on the business of the railway company, do they not?

Mr. BIDDLE: Entirely.

Mr. PEIRCE: The failure to make those rates would affect the company?

1794 Mr. BIDDLE: Entirely so. For instance, we as an important link in the trans-continental train do not undertake to say what rate can be obtained for the shipment of business from New York to San Francisco or vice versa. There are other lines which have much greater interest in it and greater knowledge of the situation. The rates having been made, we participate in them. If we did not do that, we could not participate in the other business that those people have to distribute to their various connections.

Mr. PEIRCE: In other words, if you did not participate in this, it would demoralize your other arrangements with trans-continental lines?

Mr. BIDDLE: Entirely so. It is an entirely reciprocal arrangement.

Mr. PEIRCE: It is an entirely reciprocal arrangement, and while the amount you may receive out of one particular shipment may not in itself be compensatory, it may represent a large profit on other through business that you make in connection with some through line that you would not get except for this through relation which exists in connection with this grade business.

1795 Mr. BIDDLE: It results in making, as we think, our operations as a whole profitable.

Mr. PEIRCE: And if you should be forced to retire from it, your operations would not be profitable, you think?

Mr. BIDDLE: Well, I do not know that because I could not measure what the effect of that would be. It would mean the disrupting of all arrangements of that kind, because it is common practice for a line, if it participates in a rate that is recognized as a profitable one, to be willing to participate in another rate which may not be profitable in itself, in order to maintain your whole scheme of relationship?

Mr. PEIRCE: Now, I understand if this through rate should go into effect, it practically means the tearing up of every tariff you have in existence today west of Chicago?

Mr. BIDDLE: I think it would affect every tariff we have got.

Mr. PEIRCE: You could not undertake to give an estimate of the far-reaching effect of such a reduction at this time or even later?

1796 Mr. BIDDLE: It would be, I think, a wild guess at best, but I am as certain as I can be of anything of that kind, if you cannot produce the absolute evidence, that it would be a tremendous reduction.

Mr. PEIRCE: There are some points north of Chicago, are there not, that take the Chicago rate, for instance, Milwaukee?

Mr. BIDDLE: Yes.

Mr. PEIRCE: And places up in the northwest here that have the Chicago rate?

Mr. BIDDLE: Yes.

Mr. PEIRCE: It would mean a re-adjustment of all these rates, would it not?

Mr. BIDDLE: Yes, I think it would.

Mr. PEIRCE: It would mean the re-adjustment of rates of a great many lines who are not parties to this suit in the west; for instance, take the Santa Fe?

Mr. BIDDLE: It would affect every railroad running through the west.

Mr. PEIRCE: In the same way.

Mr. BIDDLE: Yes, sir.

Mr. PEIRCE: I suppose it has been made clear in this case
1797 that the proposed rate of eighty-seven cents substituted for one dollar and forty cents would mean that the earnings of the lines from St. Louis to Kansas City, for instance, would be twenty-three cents?

Mr. PEIRCE: Twenty-three cents, yes.

Mr. BIDDLE: In other words, that the entire amount of this reduction falls on the lines west of St. Louis or Chicago.

Mr. PEIRCE: Yes. That is the theory of the complaint. If a mileage scale of rates was established up to the Missouri River, it would undoubtedly bring claims from points west of the Missouri River, to establish the same basis to those points.

Mr. BIDDLE: Unquestionably.

Mr. PEIRCE: For instance, Wichita, Topeka and Denver, Colorado and points out there?

Mr. BIDDLE: That is what I meant when I said it would result in a readjustment and realignment of the rate.

Mr. LYNDE: How long has the Mississippi River been the basis of making rates into this western territory?

Mr. BIDDLE: Always, so far as I have been able to discover.

1798 Mr. LYNDE: So as a matter of fact, what this complaint asks is really a revolution, so far as rate making in the western territory is concerned?

Mr. BIDDLE: Yes, I think that expresses it.

Mr. LYNDE: That is true on the Missouri River too?

Mr. BIDDLE: Yes.

Mr. LYNDE: Mr. Holden suggests also the question as to how long the Missouri River has been a basing point?

Mr. BIDDLE: I think so far as I know ever since through rates have been made in connection with eastern and western lines.

Mr. LYNDE: What would be the position of Chicago in connection with this proposed reduction?

Mr. BIDDLE: If the adjustment of rates that has been accepted for twenty-five or thirty years, the relative adjustment as between Chicago and St. Louis and Kansas City, is relatively correct, then there must necessarily be a readjustment of rates from Chicago and from St. Louis which will put them back relatively right where they are today.

1799 Mr. LYNDE: Well, all the business of the Missouri River points has really grown up on the present basis, has it not? That is, for the last twenty-five years?

Mr. BIDDLE: The present relative basis of rates?

Mr. LYNDE: Yes, the present relative basis of rates.

Mr. BIDDLE: Yes, sir.

Cross-examination:

Mr. ATWOOD: Is he a Burlington witness too, Mr. Holden? Do you adopt his testimony?

Mr. HOLDEN: I expect to put on another witness.

Mr. ATWOOD: Yes, but I understand he is as much a witness for you as for the company he represents officially?

Mr. HOLDEN: Yes.

Mr. ATWOOD: What is the proportion taken by the east of Chicago lines on the trans-continental rate?

Mr. BIDDLE: Well, on business from the Atlantic seaboard, I think 25 per cent. as I recollect it.

Mr. ATWOOD: That would make it in cents per hundred weight, how much?

Mr. BIDDLE: On what?

1800 Mr. ATWOOD: On the through trans-continental line?

Mr. BIDDLE: It depends what the rate was, on what class.

Mr. ATWOOD: We have been speaking of the first class.

Mr. BIDDLE: You mean of the first class?

Mr. ATWOOD: Yes.

Mr. BIDDLE: Seventy-five cents.

Mr. ATWOOD: What is the proportion that the lines receive between Chicago and the Missouri river of that rate on that class?

Mr. BIDDLE: Fifteen per cent, I believe it is.

Mr. ATWOOD: Approximately 33 cents?

Mr. BIDDLE: Yes, I think the figures cited as to the earnings between Chicago and the Missouri river of 33 cents on a through rate of \$3.00 from New York to San Francisco, are correct.

Mr. ATWOOD: It is true, is it not, that of the New York and Missouri rate, approximately 75 cents is taken by the east of Chicago lines?

Mr. BIDDLE: Yes.

Mr. ATWOOD: And how much is there left to be received by 1801 the west of Chicago lines on shipments destined for the Missouri river.

Mr. BIDDLE: Destined for the Missouri river?

Mr. ATWOOD: Yes.

Mr. BIDDLE: Are you talking about trans-continental rates now or Missouri river rates?

Mr. BIDDLE: Now, I am referring to the New York to Missouri River rates and trying to get the proportion east and west of Chicago.

Mr. BIDDLE: What was your question, as to 75 cents from New York east of Chicago, directed to the New York and Missouri river rate?

Mr. ATWOOD: Yes, I think it is a fraction less, but I was giving round numbers.

Mr. BIDDLE: In my computation I was figuring on the basis, St. Louis, 87 cents, plus 60 cents to the Missouri river, \$1.47. If, out of that—I am not sure about that—the proportion up to Chicago is 75 cents—

Mr. ATWOOD: It is 74.3 cents, to be exact.

Mr. BIDDLE: It would leave the difference between that and \$1.47.

Mr. ATWOOD: That would be 73.7 cents. Are you able to 1802 state whether or not that is the highest first class rate on goods originating at the Atlantic seaboard and moving as far west as the Missouri river, or farther, the highest proportion received by those east of the Missouri river?

Mr. BIDDLE: You are talking about today?

Mr. ATWOOD: Yes, I speak of today.

Mr. BIDDLE: Yes; I do not know of any higher rate applied on first class business. Of course, it depends on the classification; there are goods classified higher than first class.

Mr. ATWOOD: Then, as a matter of fact, the different rates from the Atlantic seaboard to points as far west as the Missouri river and farther—the portion received by the roads between Chicago and the Missouri river vary from 33 cents to 73, or 74 cents per hundred weight?

Mr. BIDDLE: Depending upon destination.

Mr. ATWOOD: Yes.

Mr. BIDDLE: Yes, sir.

Mr. ATWOOD: When was the establishment of this rate which gave you—

1803 Mr. BIDDLE: They do not carry from 33 cents to 74 cents, but from 73 cents to 80 cents; I should say the first class rate from Chicago to the Missouri river was 80 cents.

Mr. PEIRCE: You said less than 33 cents.

Mr. BIDDLE: He is speaking of this particular class.

Mr. ATWOOD: Yes, I have been dealing with the first class rate entirely. When was the rate established and the proportion which resulted in giving to the Chicago to the Missouri river line 33 cents on trans-continental stuff, beginning at the Atlantic seaboard and ending at the Pacific coast?

Mr. BIDDLE: Whenever the rate was made \$3.00, from New York to San Francisco.

Mr. ATWOOD: Do you know when it was?

Mr. BIDDLE: No; a few years ago it was \$2.50, and then they got less than 33 cents; but the proportion of division between the lines has not changed for a great many years.

Mr. ATWOOD: The percentage?

Mr. BIDDLE: The percentage, basis of dividing it.

Mr. ATWOOD: But the 33 cent rate has been established within a few years?

Mr. BIDDLE: I could not tell how long.

1804 Mr. ATWOOD: I do not mean to be exact, but approximately?

Mr. BIDDLE: Yes, it has been for three or four, or five years, I know.

Mr. ATWOOD: And prior to that time it had been even less than that?

Mr. BIDDLE: Yes; I recollect a \$2.50 rate from New York to San Francisco.

Mr. ATWOOD: Do you experience any difficulty in adjustments in your experience, when you find in one rate you have 75 per cent for the proportion of the service between Chicago and the Missouri river, while in the other it is less than that?

Mr. BIDDLE: No.

Mr. ATWOOD: You spoke of rates being compensatory. Do I understand you as desiring the Commission to understand you as saying that any rate from Chicago to the Missouri river over your lines which constitutes the whole of your service in a rate made across the continent, is less than compensatory?

Mr. BIDDLE: Yes, I think so; without any question.

1805 Mr. ATWOOD: Who pays the deficit created by that method of business management?

Mr. BIDDLE: Well, I say that there are rates that any line has to accept as a proportion of a rate in order to engage in certain traffic which is not of itself compensatory.

Mr. ATWOOD: I will frame the question differently. Do you desire to be understood by the Commission as saying that the 35 cents proportion of the trans-continental rate that goes to you for carriage between Chicago and the Missouri river, it constituting the whole of your service in that trans-continental transaction, is less than compensatory?

Mr. BIDDLE: I did not say that the 33 cent rate was less than com-

pensatory. I would not undertake to say whether any given rate which is part of a transaction is of itself compensatory or not.

Mr. ATWOOD: Was I wrong in understanding you to say in response to your counsel's question, that this rate was not compensatory?

Mr. BIDDLE: No, I did not say anything—I did not say that.

Mr. ATWOOD: Then as I understand it, if it is not *not* 1806 compensatory, it must be compensatory. Am I right in my deduction?

Mr. BIDDLE: I did not specially refer to the 33 cent rate.

Mr. ATWOOD: Pray do so now.

Mr. BIDDLE: I say as to the 33 cent rate as a proportion of a rate from New York to San Francisco, for the service between Chicago and the Missouri river, that I would not undertake to say whether that was compensatory or not.

Mr. ATWOOD: Would you feel inclined to take issue with the Burlington, your co-defendant, if in its answer it made proclamation of the fact that that business was done at a profit?

Mr. HOLDEN: Just use the exact language; it would be fairer, I think.

Mr. ATWOOD: I will. Repeat the question.

(Question repeated.)

Mr. BIDDLE: I do not see any reason now for changing the answer that I gave you.

Mr. ATWOOD: Well, is that the only answer that you vouchsafe, that you don't know whether it is compensatory or not?

1807 Mr. BIDDLE: I say there is not anyone in my judgment that can answer that question as to whether the 33 cent as a rate on dry goods, as a proportion of the rate from New York, is a fair compensatory rate.

Mr. ATWOOD: And since you are included as a member of the human family, you cannot undertake to make an answer?

Mr. BIDDLE: I think so.

Mr. ATWOOD: Do you know of a reason why the presumption that all ordinary rates are compensatory should not apply to your 33 cents?

Mr. BIDDLE: Well—

Mr. ATWOOD: You do not know any fact that would militate against it, assuming for the moment that there is such a presumption, am I right?

Mr. BIDDLE: I was thinking about just what that meant. I have already stated that I was not prepared to assume as to whether any particular rate, a 33 cent rate or a lessor rate which we might accept on some through business is of itself compensatory.

1808 Mr. ATWOOD: Well, I am not wrong, I take it, in assuming that the answer you gave to counsel stating your experience pertaining to railroad matters and freight rates was done with a view to making known to the Commissioners that you were skilled in such matters, and were, in common parlance, an expert. Is that the purpose of your testimony?

Mr. BIDDLE: Well, that does not change the answer to that question.

Mr. ATWOOD: The fact that you are an expert cannot change the truth, or enlarge your knowledge.

Mr. BIDDLE: Well, whether I am an expert or not, that is beside the question, I think.

Mr. ATWOOD: And that was not intended in any other wise than in a perfectly courteous spirit, you know.

Mr. BIDDLE: I understand.

Mr. ATWOOD: Now then, since you cannot tell us whether that rate is compensatory or not, I will ask one other question. You spoke of certain points north of Chicago, Mackinaw——

Mr. BIDDLE: Milwaukee, I believe.

1809 Mr. ATWOOD: I know, but there are others immediately in that vicinity, are there not?

Mr. BIDDLE: There is a very large group of territory in Wisconsin that takes the Chicago rates, particularly the far western territories.

Mr. ATWOOD: How would you determine, asking you as one skilled in such matters, what the rates and what the proportions would be of a shipment first class from Montreal to St. Paul, via Sault Ste Marie?

Mr. BIDDLE: I should have to ask you to ask that question of somebody else. The division of those particular rates in that section, I am perhaps less familiar with than most of them. I could not tell you. I don't know.

Mr. ATWOOD: It is usually recognized that one skilled in freight matters and representing his own company in such matters does have such knowledge of the rates of competing roads.

Mr. BIDDLE: Yes, he ought to have, but I am deficient in that particular.

Mr. ATWOOD: You don't know whether it is a fact that the rate breaks at Sault Ste Marie and from that point west the shipments over the Canadian roads to that point would take the Chicago
1810 rate?

Mr. BIDDLE: No, I do not.

Mr. ATWOOD: Do you know when the rate from the Atlantic seaboard to St. Paul was established that gave to the west of Chicago lines the 40 cent proportion, do you know when that was established?

Mr. BIDDLE: No, I do not. I am less familiar with the adjustment of rates to and from St. Paul than most anything else, because until within about two and a half years I have not had any particular interest in that rate question.

Mr. ATWOOD: Assuming for the moment that we did make a reduction from the existing rates on the character of goods that we have been considering, so that the west of Chicago proportions to the Missouri river would be the same as that given to the west of Chicago going to St. Paul, will you indicate a point intermediate between Chicago and the Missouri river that you can pick out as necessarily being affected by that action of the Commission?

1811 Mr. BIDDLE: Why, in my judgment, there are a very large number of points west of the Mississippi river that would be affected by that adjustment of rates.

Mr. ATWOOD: You have no particular one in mind at this moment?

Mr. BIDDLE: I would say all of the—as a rough guess I should say that the rates is one-third of the way back from the Missouri river would probably be affected by that adjustment of rates, possibly farther.

Mr. ATWOOD: Is that the result of your observations, of experiences resulting from the St. Paul rate?

Mr. BIDDLE: No; I don't know that it has ben true.

Mr. ATWOOD: You are stating now, not in the light of any particular experience that you have had in a similar situation.

Mr. BIDDLE: Well, I am assuming that in such an adjustment of rates as is proposed, whatever rates are made to the Missouri river under such a basis as that would have to be the maximum of intermediate points. I do not know of any argument now against that.

Mr. ATWOOD: Your road goes to St. Paul, does it not?

1812 Mr. BIDDLE: Yes.

Mr. ATWOOD: You carry goods at the \$1.15 rate from the Atlantic Seaboard to St. Paul?

Mr. BIDDLE: Yes, we participate in that rate.

Mr. ATWOOD: You get 40 cents of that?

Mr. BIDDLE: I believe so.

Mr. ATWOOD: Do you deem that profitable, compensatory or less than compensatory?

Mr. BIDDLE: Well, I think we think that is all that you can get out of it, that it is probably a rate that you can afford to carry the business at.

Mr. ATWOOD: Is it to be understood by us that rates are to be determined by what you can possibly get rather than what is probably fair?

Mr. BIDDLE: Well, you know as well as I do the conditions which enter into the making of freight rates, and that must enter into it.

Mr. ATWOOD: And when you say that—I think you flatter me when you say I know as much as you, but still I will assume that I do, and I think the conclusion to be drawn—and you will correct me if I am wrong—is that all the traffic can bear is the policy
1813 which governs the road in making its freight rates?

Mr. BIDDLE: No, I do not think so. I do not think it has ever governed us since I have had any knowledge.

Mr. ATWOOD: If it is less than the traffic will bear, what rules do govern, that it is fairly compensatory to the road?

Mr. BIDDLE: I think in all the time that I have been making freight rates, that reasonable consideration has been given to what was a fair and proper rate of itself.

Mr. ATWOOD: I have not any doubt that you think well of any rate that you have made yourself, but the question that I desire you to answer is whether or not since not all the traffic can bear was your rule, whether or not the rule was to get a reasonable profit upon the business, or something less or more.

Mr. BIDDLE: To get a reasonable rate for your service, if possible.

Mr. ATWOOD: Then you think that governs the railroads, including your own, in making the 40 cent proportion from Chicago to St. Paul, do you?

1814 Mr. BIDDLE: No, I do not think so.

Mr. ATWOOD: You do not think they make a profit in that business?

Mr. BIDDLE: I think the through rate that applies from New York to St. Paul, all rail was controlled by conditions, at least, I have always understood it was, that made it necessary to make that rate, whether it was in all cases a profitable rate or not, or retire from the traffic.

Mr. ATWOOD: Do you consider that the 40 cent proportion from Chicago to St. Paul is a profitable rate from what your experience of twenty years as a traffic man?

Mr. BIDDLE: I have already answered that by saying if it was all that under the conditions—if the through rate was as high as it ought to be made or could be made, or if conditions controlled it that made the \$1.15 rate necessary, and that 40 cents was all that the lines west of Chicago to St. Paul could get ought of it, it probably could afford to handle the business at that rate; but I

1815 will say further, that if the making of the 40 cent rate from Chicago to St. Paul had to be taken as the measure of rates on all similar business for the Rock Island Road, we would not hesitate for a minute in retiring from that territory.

Mr. ATWOOD: Repeat the question.

(Question repeated.)

Mr. BIDDLE: Well, I don't know that I can answer it any differently from that.

Mr. ATWOOD: Well, you either have an opinion or not as to whether it is or is not profitable. If you don't know, I will take your statement that you don't know. You are here as an expert, and I now ask you to give your best judgment.

Mr. BIDDLE: Well, I do not see that I can answer it any differently than I have.

Mr. ATWOOD: Then am I to understand you and do you desire us to understand you as saying that you now have no judgment despite your twenty years' experience in an exalted official position and all, that you still have no judgment with which you can enlighten this Commission as to whether 40 cents is a profitable

1816 proportion or otherwise.

Mr. BIDDLE: Now, I don't know that I would be willing to put it any plainer than I have there.

Mr. ATWOOD: And I think by your last answer that it was not as plain as it was before.

Mr. BIDDLE: I think it was. It was plain to me.

Mr. ATWOOD: Perhaps it was my fault. You speak of conditions which may control. You used, if I do not misquote you,—you employed phraseology to the effect that if that was all you could get, and you could not do any better, you would think perhaps it was wise to do the business. I withdraw that. What do you consider,

when you determine the cost of transporting a ton of merchandise, or train load of it?

Mr. BIDDLE: Well, there is no way that I know of, of arriving at the exact cost of the transportation of any individual shipments or considerable number of shipments.

Mr. ATWOOD: But still, there are certain fixed factors that always enter into that problem, and while it is not an exact science, the initial cost of the road is one factor.

1817 Mr. BIDDLE: Yes, sir.

Mr. ATWOOD: The necessary interest that has to be earned.

Mr. BIDDLE: Yes.

Mr. ATWOOD: Including the equipment. That is right, is it not?

Mr. BIDDLE: Everything that enters into expense and maintenance of the property including—

Mr. ATWOOD: The fuel and wear and tear on the machinery.

Mr. BIDDLE: Yes.

Mr. ATWOOD: And wages. Your employes—all those are factors. Can you think of another that occurs to you just now?

Mr. BIDDLE: I say everything that enters into the original cost of construction and maintenance of a plant of that character.

Mr. ATWOOD: Does the mere fact that you cannot get any more business, or that you cannot get business other than at a certain figure, change those fixed factors in your problem of cost?

Mr. BIDDLE: No.

1818 Mr. ATWOOD: Then what do you mean by saying that the cost or profitableness of the business was to be determined by the question of whether or not you could get any more out of it?

Mr. BIDDLE: You were speaking directly of the New York, St. Paul rates, were you not?

Mr. ATWOOD: Yes, I am talking about that 40 cent proportion from New York to St. Paul. You said if you could not get any more, you would call it profitable.

Mr. BIDDLE: I will say if the lines terminating at St. Paul determined that \$1.15 was the highest rate that could be secured in the division of that rate between New York and St. Paul, the lines from Chicago to St. Paul were obliged to accept 40 cents, and if they did not think that they were losing money at that, they would take the business. That is merely a matter of judgment as between two men making the freight rate and charged with the responsibility of accepting or rejecting a certain proposition.

Mr. ATWOOD: And I am right in inferring from that, then, that the 40 cent rate would be profitable, then?

1819 Mr. BIDDLE: The assumption was that it was either not profitable or there were certain commercial reasons which made it necessary.

Mr. ATWOOD: You are not attempting to justify any result that one portion of your road should carry the goods at less than cost and make someone else pay the difference?

Mr. BIDDLE: No.

Mr. ATWOOD: Then I am right, that it does result in profit?

Mr. BIDDLE: I don't know whether it is profitable or not.

Mr. ATWOOD: You don't know whether it is profitable or not?

Mr. BIDDLE: No.

Mr. ATWOOD: You are certainly not ready to say it was not profitable?

Mr. BIDDLE: No, I am not.

Mr. ATWOOD: Would it be a fact, assuming for a moment that you could not get into five cents a hundredweight within the \$1.15 Atlantic seaboard to St. Paul rate, do I understand that would 1820 change the factor of cost in transporting it?

Mr. BIDDLE: No.

Mr. ATWOOD: Harking back to your proposition that that is all you could get, then it is profitable, you say?

Mr. BIDDLE: Just one moment; when I say all you can get, I am not talking about all the merchant can pay or will pay, but I am talking about other conditions which may fix that as the major that the all rail line can get.

Mr. ATWOOD: That was the phrase you used, all that you could get. What do you mean by that?

Mr. BIDDLE: I suppose, without being possibly as familiar with the New York St. Paul rate as I might be, that there was some condition that made \$1.15 necessary from New York to St. Paul, to allow the all rail lines to engage in that traffic.

Mr. ATWOOD: But what it is you do not know?

Mr. BIDDLE: I do not claim to know all the factors that entered into it. I think I have already told you I am less familiar 1821 with the St. Paul situation than I am with any other.

Mr. ATWOOD: Perhaps I am repeating, but I do not desire to misunderstand you, but whatever the factors were which fixed that rate, you do not know?

Mr. BIDDLE: No.

Mr. ATWOOD: You do not know whether the 40 cents was profitable or not?

Mr. BIDDLE: I do not.

Mr. ATWOOD: And you certainly would not undertake to say it was unprofitable?

Mr. BIDDLE: No.

Mr. ATWOOD: What is your experience as a freight man?

Mr. BIDDLE: About twenty-six or twenty-eight years.

Mr. ATWOOD: And you have devoted all that time to this particular branch of railroading?

Mr. BIDDLE: Yes.

Mr. ATWOOD: And your present relation with the business of the Rock Island is what? I do not care for your official title, 1822 but what is the duty you have to perform?

Mr. BIDDLE: Vice-President, in charge of the freight traffic.

Mr. ATWOOD: Your line does run to St. Paul?

Mr. BIDDLE: Yes

Mr. ATWOOD: Do you think you would know if there had been so predominant a factor in your business as this 40 cent proportion as an unprofitable factor, that you would not have been aware of it?

Mr. BIDDLE: It is a condition which has been there a good many years. I found it there, and as I say, I do not know of anyone, I do not know of any so-called traffic expert that would undertake to single out a single rate by itself and say whether that rate was profitable and if so, how much profit there was in it. Unless you can say how much profit there is in the 40 cent rate, you cannot say, so far as I can see, definitely whether it is profitable. I am willing to confess right now that I cannot do it.

Mr. ATWOOD: Is there any method of ascertaining or attempting to ascertain the cost of carriage of goods over your road as
1823 a per ton per mile measurement or per train mile measurement or any other way?

Mr. BIDDLE: Yes.

Mr. ATWOOD: And which do you employ, if either or both?

Mr. BIDDLE: All these factors are taken into consideration in determining your results.

Mr. ATWOOD: These computations are made at least with your knowledge each year, are they not?

Mr. BIDDLE: Oh, they are prepared, we all have knowledge of them, of course.

Mr. ATWOOD: You, in order to have an intelligent knowledge of what your road is doing, have to be fairly in touch with its earnings in its various branches, do you not?

Mr. BIDDLE: I try to.

Mr. ATWOOD: How long has the St. Paul line been in existence? Ever since you have been in charge of the road?

Mr. BIDDLE: The Milwaukee & St. Paul?

Mr. ATWOOD: No, the St. Paul end of the Rock Island, running from Chicago to St. Paul, how long has it been in exist-
1824 ence?

Mr. BIDDLE: It was there when I came with the property.

Mr. ATWOOD: That, of course, is only one of the things it is your duty, at least, to be in some degree familiar with, that line or portion of the system?

Mr. BIDDLE: Yes, sir.

Mr. ATWOOD: And yet you are not ready to say to the Commissioners whether or not the 40 cent proportion on this class of goods from Chicago to St. Paul is profitable or unprofitable?

Mr. BIDDLE: No more than I am willing to say that 33 cents from Chicago to Kansas City is profitable or unprofitable as a proportion of the California rate.

Mr. ATWOOD: The trans-continental rate, was the making of it participated in by you, or was it prior to your connection with the road?

Mr. BIDDLE: All the trans-continental lines are usually parties to these rates. This particular rate, I don't know that I had any definite knowledge of. It might have been a rate which ran back to the
1825 time I was connected with the Santa Fe, for all I know now.

Mr. ATWOOD: When you did come into the position you now occupy, which enables you to fix the rates for your road—you are the controlling factor?

Mr. BIDDLE: Yes.

Mr. ATWOOD: If you think a certain rate is improper, you have the right to change it?

Mr. BIDDLE: Yes.

Mr. ATWOOD: And when you came into this position of power which you have just described, did you deem it your duty to become familiar, if you were not already so, with the rates obtaining over your lines?

Mr. BIDDLE: Yes, sir; as fast as possible.

Mr. ATWOOD: With a view of seeing whether or not they were proper rates?

Mr. BIDDLE: Yes, sir.

Mr. ATWOOD: The proper rate, of course, included the factor, of course?

Mr. BIDDLE: Yes.

Mr. ATWOOD: That is at least one of them?

1826 Mr. BIDDLE: Yes.

Mr. ATWOOD: You recognized that you ought not to carry goods between A and B for less than cost, and make the people between C and D make up for that?

Mr. BIDDLE: Oh, that has never been considered in the way of making freight rates.

Mr. ATWOOD: Do I understand from that that you do not intend that one portion of the community shall bear the burdens of another portion?

Mr. BIDDLE: So far as possible it is the intention to make all business pay its reasonable burden.

Mr. ATWOOD: And when you made an examination of the various rates such as you were not familiar with when you came into your position of power, it was with a view of seeing that the rates were just, in view of your suggestion a moment ago?

Mr. BIDDLE: The situation was all gone over, of course, as rapidly as possible.

Mr. ATWOOD: This 33 cent proportion from Chicago to Kansas City was one of the things which came under your observation?

Mr. BIDDLE: Yes.

1827 Mr. ATWOOD: And you were satisfied with it sufficiently to allow it to remain?

Mr. BIDDLE: There was nothing else to do.

Mr. ATWOOD: You did permit it to remain?

Mr. BIDDLE: Certainly.

Mr. ATWOOD: Do you know what the through rate from Chicago to El Paso is, first class, of course?

Mr. BIDDLE: No, I have not the slightest idea.

Mr. ATWOOD: Or Texas common points?

Mr. BIDDLE: No.

Mr. ATWOOD: Oklahoma common points?

Mr. BIDDLE: No.

Mr. ATWOOD: Now, one question more, Mr. Biddle. Would you give us an idea of what you, as one skilled in freight making and the

operation of the railroad, would consider a fair profit for the transporting of goods over and above the cost of so doing?

Mr. BIDDLE: No.

Mr. ATWOOD: What is the answer?

Mr. BIDDLE: No, I would not undertake to give you an answer to that.

1828 Mr. ATWOOD: Would you think as one skilled in such matters that 50 per cent above the cost of operation would be a fair profit?

Mr. BIDDLE: I would not undertake to answer your question as to what—I don't know how to put it so as to give you an intelligent answer.

Mr. ATWOOD: I think you wrong yourself, if you will permit me to say so.

Mr. BIDDLE: Well, I think that.

Mr. ATWOOD: But I want to be sure that I understand you, that you are not ready to say to the Commission whether or not 50 per cent profit over and above the cost of operating or transporting goods would or would not be a fair profit?

Mr. BIDDLE: Well, I——

Commissioner CLARK: What do you mean by the cost of transporting the goods?

Mr. ATWOOD: I mean just that. I thought he would know what it would cost. I meant to include everything that is included in his cost of transportation, and he has such an infinitely more perfect knowledge of that, that I will not attempt to enumerate them. I tried it a few moments ago. Whatever is a proper element in the cost, as a proper element to be considered, whether or not 50 per cent is reasonable in the eyes of the Rock Island freight department or not.

Mr. BIDDLE: Well, I would be glad of an opportunity to charge 50 per cent profit.

Mr. ATWOOD: Well, are you ready to say that it is right?

Mr. BIDDLE: Oh, no, I do not think that 50 per cent profit would be reasonable.

Mr. ATWOOD: It would be too much or too little?

Mr. BIDDLE: Well, I think it is too large, of course.

Mr. ATWOOD: How much less would be reasonable, in your mind?

Mr. BIDDLE: You cannot tell, that is a question that I cannot answer, for just the reason that I said, that I would not undertake to answer your question as to what a reasonable profit is.

Mr. ATWOOD: But you think 50 per cent is too great?

1830 Mr. BIDDLE: When you come to figure out the profit over the cost of transportation, I don't know how to answer your question so as to answer it intelligently. Because it is not the cost of transportation, it is the entire cost of the operation of your railroad. Now, if that is considered to enter into the cost, if the cost of transportation is intended to include that, then I say that a reasonable return on your investment constitutes a reasonable rate, or a reasonable profit.

Mr. ATWOOD: When you are undertaking to determine whether

a certain business is being done at cost, you take into consideration all the elements that you deem proper elements?

Mr. BIDDLE: Even then it is largely a matter of judgment and intelligence. There is no fixed way that I know of that you can get at it.

Mr. ATWOOD: While the working out in a particular instance would apply that way, and there are circumstances pertaining to that particular instance, I ask whether it is not a fact that
1831 you should take into consideration all the elements that you recognize as cost elements.

Mr. BIDDLE: Naturally.

Mr. ATWOOD: And you did with all the rates which we have been discussing?

Mr. BIDDLE: Even then the rates might not have represented what would be considered proper rates.

Mr. ATWOOD: We are all human, but that is the purpose of the company, is not that the fact?

Mr. BIDDLE: As far as possible, yes.

Mr. ATWOOD: When a rate has been in existence for five or six years, is there any indication in that fact that it is a proper rate and carries cost at least with it?

Mr. BIDDLE: Not necessarily.

Mr. ATWOOD: You think that the management is that uncertain of its properties that a non-productive or non-compensatory rate could be in force on your road for five or six years and you might not discover it?

Mr. BIDDLE: It might be in force much longer, and it might be continued with the full knowledge that it was not a profitable
1832 rate.

Mr. ATWOOD: Have you some instance of that sort in mind?

Mr. BIDDLE: There does not any occur to me now, that I can say.

Mr. ATWOOD: Do I infer from that that you do have as part of your policy the carrying of certain goods, or to certain points at less than cost to recoup against somebody else?

Mr. BIDDLE: No.

Mr. ATWOOD: You would not think that that was a proper way to run a railroad?

Mr. BIDDLE: No.

Mr. ATWOOD: So, as I understand it, if any such situation as we have been describing, a non-compensatory rate, should be continued for any length of time, it would not be done with your approval?

Mr. BIDDLE: Well, it might be continued, yes. I say that that is not the principle upon which our rates are made, but there might be many cases where a particular rate was continued with
1833 the full knowledge that possibly it was not a profitable rate because of the other considerations surrounding it.

Mr. ATWOOD: How about it being continued if you recognized that it was being done at a loss, and that somebody else had to bear the burden of it?

Mr. BIDDLE: That would depend altogether upon the circumstances.

Mr. ATWOOD: Well, I understand you mean to say that your policy is such that you do not hesitate, if you feel you want to do it or ought to do it, to have goods carried at a loss, and make somebody else recoup?

Mr. BIDDLE: I did not say that, but I have already said that there are no means I know of that can be applied to the making of freight rates under which anybody could accurately determine in all cases what was a compensatory rate on any particular commodity or any particular service.

Mr. ATWOOD: But I think you said a moment ago and I think if I am wrong that you will correct me, that the conditions might
1834 be such that you would recognize and permit to continue non-competitive rates.

Mr. BIDDLE: I have said, and I referred particularly to this proportional rate that you were speaking of, that that might be continued or might be in effect where the rate was not of itself taken by itself a profitable rate.

Mr. ATWOOD: I asked you a moment since, to give an illustration of the non-compensatory rate, and you said you had none in mind.

Mr. BIDDLE: I said cases of that kind might occur.

Mr. ATWOOD: Surely, but what I am trying to get at is whether or not it is the policy of you as the manager of your company's business, to permit unprofitable business to be carried on an unprofitable schedule of rate to be continued.

Mr. BIDDLE: If all the factors are to be taken into consideration, no.

Mr. ATWOOD: What is the local between Chicago and St. Paul?

Mr. BIDDLE: I am sure I don't know.

Mr. ATWOOD: Will you take my statement that it is 60 cents?

1835 Mr. BIDDLE: I think it is 60 cents.

Mr. ATWOOD: Now, that 60 cents local continued with the proportionate intermediate locals, does it not, which obtains right now, does it not?

Mr. BIDDLE: I presume so.

Mr. ATWOOD: And yet your proportion of the through rate from New York to St. Paul is 40 cents?

Mr. BIDDLE: Yes.

Mr. ATWOOD: Then that rate does not seem to affect the local to the extent of reducing it to an equality, does it?

Mr. BIDDLE: I have said there were conditions surrounding the St. Paul situation which justified the making of a less rate possibly to St. Paul than prevailed at intermediate points.

Mr. ATWOOD: But what those are I understand you do not know?

Mr. BIDDLE: No, I am not sufficiently familiar with them. I know that is the basis on which those rates have been made.

Mr. ATWOOD: It was said by you, as I recall it, that the re-
1836 duction would of necessity fall upon west of Chicago lines.

Mr. BIDDLE: That is my understanding of it.

Mr. ATWOOD: That is true also of the conditions obtaining between Chicago and St. Paul, is it not, all the reductions below the \$1.15, that is all the difference—put it in another way, the east of Chicago lines get their approximately 75 cents no matter where it goes after it gets to Chicago?

Mr. BIDDLE: I think so.

Mr. ATWOOD: So there would be no greater hardship, would there on the west of Chicago lines, barring a reduction like that when dealing with Kansas City and Missouri river points than in dealing with St. Paul.

Mr. BIDDLE: That gets back to the question as to whether the \$1.15 rate to St. Paul is not a proper rate or—

Mr. ATWOOD: I think you have already said, but I will ask again, that on all the business moved across the country, the east of Chicago lines get approximately the same sum?

Mr. BIDDLE: No, I did not say that.

Mr. ATWOOD: On first class business?

1837 Mr. BIDDLE: Because I don't know.

Mr. ATWOOD: Of course, while I sometimes leave "first class" out, you will be good enough to understand that is what I have reference to each time.

Mr. BIDDLE: Well, I don't know that that is so.

Mr. ATWOOD: In the trans-continental stuff they get 75 cents?

Mr. BIDDLE: Yes, they would happen to get that adjustment of rates.

Mr. ATWOOD: On the St. Paul stuff they get 75 cents approximately

Mr. BIDDLE: I think so.

Mr. ATWOOD: From the Atlantic to the Missouri river—

Mr. BIDDLE: But if you will go back to what I said, that three or four years ago there was a \$2.50 rate from New York to San Francisco, out of which they got the same percentage of the rate, and which would have been less than 75 cents, you will see what I mean. They happened to get the same earning simply because the rate happened to be \$3.00, and therefore their proportion of it, 75 cents, happened to give them approximately the same rate.

1838 Mr. ATWOOD: The interposition of fate, or whatever it is, the fact remains they get approximately the same sum per hundred-weight for the carriage of first class goods from New York to San Francisco, New York to St. Paul, or New York to the Missouri river points?

Mr. BIDDLE: I think that is so, yes, sir.

Mr. ATWOOD: Now, assuming, if you will permit me to do so, that the rate to St. Paul is compensatory, that the rates between Chicago and Missouri river points on trans-continental stuff is, as the Burlington said, done with some profit, can you see any reason as an expert why Missouri river points should not have some sort of a reduction from the sum which is now being imposed upon them?

Mr. BIDDLE: As that is based upon an assumption which I said I would not undertake to answer, I do not see how you could expect me to answer that question.

Mr. ATWOOD: That is the best answer you can make as to that question?

Mr. BIDDLE: I think so.

1839 Mr. ATWOOD: That is all.

Commissioner CLARK: In your expression of belief, that if this rate was reduced as prayed for, that it would result in the affecting and perhaps necessitating a readjustment of all the other rates in the west, do you by that mean that it would force a like adjustment in the rates to other points?

Mr. BIDDLE: To other points, or prominent points?

Commissioner CLARK: To other points from the Atlantic seaboard.

Mr. BIDDLE: Why yes, it would result—

Commissioner CLARK: Suppose, for instance, that this Commission should by an order, fix a rate of \$1.10 first class from New York to Kansas City; divided as the present rate is divided, 75 cents east of Chicago and 35 cents west of Chicago; now in what way would that affect the rate from New York to Chicago, if at all, or from New York to St. Paul, or from Chicago to St. Paul, or from New York to the upper Mississippi river crossings? I do not mean the measure of the effect but in what way would it affect it, if at all?

Mr. BIDDLE: It would affect them automatically, there
1840 is no question about that.

Commissioner CLARK: You mean that it would automatically work a corresponding reduction in the rate to those other places?

Mr. BIDDLE: I don't know as I understand your question, Mr. Clark.

Commissioner CLARK: I understood you to express the opinion that if these rates were reduced to the Missouri river crossings, as prayed for, that it would affect the rate adjustment throughout this western territory?

Mr. BIDDLE: Entirely so.

Commissioner CLARK: Now I ask you to indicate in what way that would be brought about, not necessarily the measure of the effect—

Mr. BIDDLE: I understand. I made that statement on the assumption that the relative adjustment of rates as between Chicago and St. Louis, and Kansas City to this western country, having been in effect for twenty-five or thirty years, was presumable a fair, relative adjustment of rates and if the adjustment was disturbed by reducing the rates into Kansas City, that it necessarily would follow that the corresponding reduction would have to be made to
1841 St. Louis, or Chicago, or the entire relative rate adjustment would have to be disturbed, and that the entire adjustment of rates to the west, to the territory served by these different markets, would also have to be readjusted.

Commissioner CLARK: Are you willing to express any opinion as to what the effect would be if any, upon St. Louis, Chicago, St. Paul, Minneapolis and other points of importance intermediate between Chicago and the Missouri river, if these rates were fixed as

prayed for at Kansas City, St. Joe and Omaha, and no change was made in the other rates?

Mr. BIDDLE: Why, yes, I think it would give Kansas City an advantage over all the other territory and it would require a readjustment of rates at the other points.

Mr. ATWOOD: You say it would give the northwest—you mean St. Paul and Minneapolis—it would give Kansas City over St. Paul and Minneapolis an advantage?

1842 Mr. BIDDLE: No, I said it would disturb the relative adjustment of rates which had existed for all of these years and to the extent it was disturbed, it would give the towns which were benefitted by these rates an advantage.

Mr. ATWOOD: An advantage over the obtaining conditions?

Mr. BIDDLE: Over a condition which had been recognized in all rate adjustments as being a fair relative adjustment of rates.

Mr. ATWOOD: But the fact remains that the incoming freight to St. Paul and Kansas City from the Atlantic seaboard has a disparity of thirty-two cents per hundred pounds in favor of St. Paul, it is a fact, is it not?

Mr. BIDDLE: I think so.

Mr. ATWOOD: And you think to equalize that difference would be creating an undue advantage for the Missouri River cities?

Mr. BIDDLE: I think if that condition exists, so far as St. Paul is concerned, the same disadvantage exists so far as St. Louis
1843 or Chicago is concerned into the same territory reached by the same people.

Commissioner CLARK: He did not say it would result in any undue advantage. He answered my question just as I put it, what would be the effect upon these other places if the rates were reduced as prayed for to Kansas City, Omaha and St. Joseph and no change was made in the rates to the other places, and his answer was that it would give Kansas City an advantage over all the rest.

Mr. ATWOOD: And I framed a question and asked him whether it would be an undue advantage, not intending to quote you.

Mr. BIDDLE: My answer to that is yes, that it would be an undue advantage in my judgment.

Mr. ATWOOD: Since you are not familiar with the conditions which resulted in the creation of the \$1.15 rate to St. Paul, how is it you are able to state that the equalizing of conditions between Missouri River points and St. Paul would be an undue advantage to the Missouri River points?

Mr. BIDDLE: I am pointing to the fact that here is an adjustment of rates which has been in effect between these
1844 markets for twenty-five or thirty years; that it has had the benefit of all the talent and all the various communities in bringing about this adjustment, and it has been accepted probably as the best solution of a very difficult proposition that could be brought about, and I say without any hesitation in my judgment the disturbing of those conditions means the upsetting of the entire rate adjustments in this western country.

Mr. ATWOOD: Are we to infer from that that you desire to be

understood as saying that because an error is ancient and a wrong is long standing, it should not be changed?

Mr. BIDDLE: I have not admitted yet that there was an error, at least I have not intended to.

Mr. ATWOOD: No, but you have not stated that these rates which we have been discussing are not profitable either, as I understand.

Mr. BIDDLE: No, I have not.

Mr. SCOTT: Mr. Biddle, if there was to be a re-adjustment of the rates from the lines west of Chicago on a fair and equitable basis, now can you think of any condition or demand that would
1845 require the fixing of a rate from Chicago to Sioux City or Omaha at substantially thirty per cent advance over the rate from Chicago to St. Paul.

Mr. BIDDLE: Well, I think I can only answer that by saying just as I have heretofore, that here is an adjustment that has been in effect all these years. That every one of these communities, you might say, directly or indirectly have had a hand in making it, just as the railroads have, and it is finally a basis that has been reached and that has stood the test of time with, you might say, very few changes. Now, I am not attempting to defend the adjustment of rates any more than as I say it has received all that consideration, and it is fair, and in my judgment any change of it—I am of the opinion that it is relatively fair and any change in it will simply create chaos. I think that is the best answer I could give to the question. You are assuming that it is a disadvantage of a certain number of cents per hundred pounds. So far as actual figures are concerned in the rate adjustment, it shows in the figures, and I say the relative adjustment has been there all
these years and all these communities competing for the
1846 business in the territory beyond, and just as sure as fate, a change in one would change them all.

Mr. SCOTT: But the condition which justifies that you are unable to give?

Mr. BIDDLE: I have already said so far as the particular St. Paul adjustment is concerned, I knew less about that than anything else.

Commissioner CLARK: I do not see anything to be gained by asking this witness that question. He stated a dozen times that he does not profess to know what controlled them in fixing that St. Paul rate.

Redirect examination:

Mr. PEIRCE: I just want to put one specific illustration on the record. The rate to Kansas City from New York is \$1.47.

Mr. BIDDLE: Yes.

Mr. PEIRCE: The local rate from Kansas City to Chicago is \$.60?

Mr. BIDDLE: Yes.

Mr. PEIRCE: Now, if St. Louis gets into Kansas City she has got to pay \$1.47, has she not?

1847 Mr. BIDDLE: What?

Mr. PEIRCE: If St. Louis gets the Kansas City, that is on goods originating at the seaboard?

Mr. BIDDLE: Yes.

Mr. PEIRCE: They must pay \$1.47?

Mr. BIDDLE: Yes.

Mr. PEIRCE: You pay the \$.87 to the Mississippi River and \$.60 beyond?

Mr. BIDDLE: Yes.

Mr. PEIRCE: If Kansas City gets goods from the seaboard to the Missouri River, she must pay \$1.47?

Mr. BIDDLE: Yes.

Mr. PEIRCE: Now, if Kansas City gets the goods from the Atlantic seaboard to the Missouri River for \$1.10 and the rate remains the same through St. Louis, that is of \$1.47, that would be a specific illustration of the disturbance of conditions, unless the St. Louis rate was changed?

Mr. BIDDLE: Precisely.

Mr. PEIRCE: That would enable Kansas City to go clear back nearly to St. Louis to do business, would it not?

Mr. BIDDLE: Certainly.

1848 Mr. PEIRCE: And it would be going against the course of commerce there, would it not?

Mr. BIDDLE: Yes, sir.

Mr. PEIRCE: And the tendency is west?

Mr. BIDDLE: Yes.

Mr. PEIRCE: And that would enable Kansas City to bring her goods into Kansas City and get them back nearly to St. Louis?

Mr. BIDDLE: Yes, sir.

Mr. PEIRCE: That now is an illustration of what you mean by disturbing conditions?

Mr. BIDDLE: Yes.

Mr. PEIRCE: That is a typical illustration, is it not?

Mr. BIDDLE: Yes.

Mr. PEIRCE: There were some other points I will just ask you briefly about, which I neglected to do in my direct examination. In this regard, the rates to El Paso and rates to Texas common points, and the rates to the other points in Texas, and Spokane, and all Montana common points, all these points out there, a good many of those rates where the division was shown, it is claimed

1849 that the revenue which you received on this business to the Missouri River is less than it is on the Missouri River business.

Now, in all cases of that kind those rates are made by what?

Mr. BIDDLE: Competitive conditions.

Mr. PEIRCE: Competitive conditions, or water conditions?

Mr. BIDDLE: Yes.

Mr. PEIRCE: Or commercial conditions which necessitate you to make that rate or retire from business?

Mr. BIDDLE: Yes, the measure of the rate is fixed and the other is simply a question of the distribution between the different carriers.

Mr. PEIRCE: As I understand you to say, you have been closely associated with this rate adjustment in the western territory, particularly between Chicago and St. Louis and the Missouri River and be-

yond for a great many years and you consider that the present adjustment, taking into consideration all of the competitive conditions, both water and rail, and the best interests of your company in reference to through connections with other lines on not only this business of the highest classes, but other business, and the protection of the company's interests and the territory's interest, 1850 that the present adjustment is the result of twenty years experience?

Mr. BIDDLE: Yes.

Mr. PEIRCE: And that it cannot be changed?

Mr. BIDDLE: Longer than that.

Mr. PEIRCE: Longer than that?

Mr. BIDDLE: Yes.

Mr. PEIRCE: It is not possible for you to change it?

Mr. BIDDLE: I think not.

Mr. PEIRCE: If you wanted to do it, you could not change it?

Mr. BIDDLE: I do not think so.

Mr. PEIRCE: There is not any such rate as thirty-three cents from Chicago to the Missouri River, is there?

Mr. BIDDLE: First class rates?

Mr. PEIRCE: Yes.

Mr. BIDDLE: No.

Mr. PEIRCE: That is simply a division of the through rate on Pacific Coast business originating at the Atlantic seaboard.

1851 Mr. BIDDLE: That is it.

Mr. PEIRCE: And that is all you can get out of it?

Mr. BIDDLE: Yes, sir, that is all.

Mr. LYNDE: Of course an illustration as to St. Louis would mean the same as to all points west of the Missouri River, where the rates are made west?

Mr. BIDDLE: Yes, sir.

Mr. LYNDE: Necessarily any reduction on the rates west of the Missouri River would reduce all those rates by the same lines?

Mr. BIDDLE: Yes.

Mr. LYNDE: And the Chairman's question as originally put, taking simply points on the Mississippi River, as I remember it, he referred to Mississippi River points and did not refer to the intermediate territory between the Mississippi and Missouri River, that is the territory where the maximum rate would apply?

Mr. BIDDLE: The Missouri River rates would apply as a maximum under the present custom.

Mr. LYNDE: And from that would result the reductions which you have referred to there?

1852 Mr. BIDDLE: Yes.

Mr. LYNDE: Then, too, the basis of rates which would be required in order to enable Chicago to have the fair proportion of the business, that is also a factor that would have to be considered?

Mr. BIDDLE: It was contemplated in my statement when I said it would require an entire readjustment of those rates.

Mr. LYNDE: That is as I understand it. That is all.

Commissioner CLARK: I thought, Mr. Lynde, that it was obvious

that any change to the Missouri River would affect intermediate territory. I was trying to get at what the probable effect in the witness' opinion would be on these rival commercial centers.

Mr. BIDDLE: Well, did I not answer?

Commissioner CLARK: Yes, I think so.

Mr. LYNDE: But there is an intermediate territory between Chicago and the Missouri River which would not necessarily be affected in view of the fact that the complaint asks to have the Mississippi River rate remain the same, the eighty-seven cent rate up to the Mississippi River, as I interpret it, but Chicago interests do not seem to be considered.

1853 Commissioner CLARK: If they changed the rate to Kansas City, and that forced a change at St. Louis or intermediate territory between St. Louis and Kansas City, the intermediate territory between St. Louis and Kansas City would necessarily be affected. That is obvious.

Mr. LYNDE: I quite agree with you. That is what I wanted to have made clear.

Witness excused.

1854 W. L. MARTIN, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. LYNDE: With what road are you connected?

Mr. MARTIN: The Minneapolis, St. Paul and Sault Ste. Marie, commonly called the Soo Line.

Mr. LYNDE: How long have you been connected with that road?

Mr. MARTIN: Twenty-one years.

Mr. LYNDE: In what department, traffic or operating?

Mr. MARTIN: Well, a little over half in the traffic, the last half.

Mr. LYNDE: The last half?

Mr. MARTIN: About thirteen years.

Mr. LYNDE: Were you connected with that line in 1897?

Mr. MARTIN: Yes.

Mr. LYNDE: And with what department at that time?

Mr. MARTIN: The freight traffic.

Mr. LYNDE: In what capacity?

Mr. MARTIN: General Freight Agent.

1855 Mr. LYNDE: Do you know Mr. Martin as to the rates to St. Paul from the Atlantic seaboard, the \$1.15 rate, do you know that that is the all rail rate?

Mr. MARTIN: Yes.

Mr. LYNDE: When did that rate first go into effect?

Mr. MARTIN: I think in January, 1897.

Mr. LYNDE: What railroad initiated that rate?

Mr. MARTIN: The Soo Line.

Mr. LYNDE: Did it publish a tariff in January, 1897 putting in effect a proportional rate of \$.40 from Sault Ste. Marie to St. Paul and Minneapolis?

Mr. MARTIN: Yes, sir, I think it did.

Mr. LYNDE: Can you refer to your papers and give us the number of that tariff and the date it went into effect?

Mr. MARTIN: Well, I have, Mr. Lynde, a file of what is known as the rate cards. They were convenient, and Mr. Peirce had them, I loaned them to him. They are not official tariffs, but I found that for the information of the public, we published this card, taking effect January 30, 1897, making \$1.05 differential scale, that is \$1.15 standard. I think that was the first time it was issued.

1856 Mr. LYNDE: Well, I wish you would look at the paper I now hand you (handing paper) and see what that paper is?

Mr. MARTIN: That is a copy, apparently, of one of our tariffs. I. C. C. No. 163, taking effect January 27, 1897?

Mr. LYNDE: Purporting to be a tariff establishing rates from what points and on what business?

Mr. MARTIN: It is a proportional tariff on traffic originating south of Ogdensburg, New York, and east of Newport, Vermont, when rated via Sault Ste. Marie and on traffic originating at and east of Buffalo, Pittsburg, etc., when routed via Mackinaw City.

Mr. LYNDE: What is the rate first class?

Mr. MARTIN: From Mackinaw City and Sault Ste. Marie to Minneapolis and St. Paul, \$.40 first class.

Mr. LYNDE: When did that tariff go into effect?

Mr. MARTIN: January 25, 1897.

Mr. LYNDE: The I. C. C. number you have given. What is your company's number?

Mr. MARTIN: Our G. F. D.—this is amendment No. 1 to
1857 G. F. D. No. 2055.

Mr. LYNDE: Was that forty cent rate established at that time first by your company, is that the fact?

Mr. MARTIN: Well, I think—if it is permitted to make an explanation?

Mr. LYNDE: Certainly.

Mr. MARTIN: The proposition to make the \$1.15 rate from New York and Boston and \$1.05 via the differential lines, but using the standard lines, \$1.15, was the first proposition.

Mr. LYNDE: That came from your company, as I understand.

Mr. MARTIN: Absolutely, yes, sir.

Mr. LYNDE: Was there any protest or any action taken by the other roads at that time?

Mr. MARTIN: There was a most vigorous protest and conferences were held to consider the matter.

Mr. LYNDE: Did the other roads endeavor to persuade your company to refrain from that action?

Mr. MARTIN: Yes, sir.

Mr. LYNDE: It is a fact, is it not that they went as far as to appeal to the Canadian Pacific officials to prevent that action, did
1858 they not?

Mr. MARTIN: Yes, sir.

Mr. LYNDE: To whom did they write in that regard?

Mr. MARTIN: Mr. Midgeley, as chairman of what was known as the traffic committee, wrote to Sir William Van Horne, president of the Canadian Pacific Railway.

Mr. LYNDE: By way of protest against that action?

Mr. MARTIN: Yes.

Mr. ATWOOD: We object to that as hearsay.

Mr. MARTIN: It is not hearsay.

Mr. ATWOOD: As secondary evidence as to the contents of a paper.

Mr. MARTIN: He asked me, however, and Sir William Van Horne gave me the correspondence and I supposed I knew.

Mr. ATWOOD: I was addressing the Commissioners, and not you. If they insist it is not secondary evidence, I am willing to leave it go. Of course we are all familiar with the rules of evidence.

Mr. LYNDE: We have not had any very rigid rules observed here. Commissioner CLARK: We do not make any pretense of 1859 holding counsel down to strict rules of evidence. We try to get at the substantial and material facts.

Mr. LYNDE: Well, the question has been answered.

Commissioner CLARK: The witness has testified that the proposition of his company was protested by the other interested and competing lines. I do not think it is necessary for him to state the contents of any correspondence, unless it is correspondence which he sent out or which came to him in the ordinary course of business.

Mr. LYNDE: I really have not asked him to state the substance of any correspondence. What was done by the other lines was the result of the action of the Soo Line.

Mr. MARTIN: Do you mean the ultimate result?

Mr. LYNDE: Yes. What did the other companies do?

Mr. MARTIN: They published from Chicago and possibly other through points that are based on Chicago, the forty cent scale.

Mr. LYNDE: To St. Paul?

Mr. MARTIN: To St. Paul and Minneapolis and Minnesota Transfers.

Mr. LYNDE: As a proportional rate?

1860 Mr. MARTIN: Yes.

Mr. LYNDE: And that action, did or did it not follow the action of the Soo Line to which you have referred?

Mr. MARTIN: It followed our decision announced to them that we intended to do this.

Mr. LYNDE: And their protest against your action?

Mr. MARTIN: Yes, sir.

Mr. LYNDE: Well, did it or did it not follow the date of this card, January 25, 1897?

Mr. MARTIN: I think—the tariff which you just showed me?

Mr. LYNDE: Yes.

Mr. MARTIN: Not being familiar with the date their's took effect, I cannot say. It might have been about the same.

Mr. LYNDE: I will offer in evidence the tariff which has been referred to by the witness, and which is the one he has stated was issued, being Soo Line amendment No. 1 to No. 2055, and I. C. C. No. 163.

(The paper was received in evidence and marked "Exhibit No. 1 to Mr. Martin's testimony.")

1861 Mr. LYNDE: I simply call the attention of the witness to the rates on first class, but the tariff itself covers all the class rates and establishes a graduating scale of rates taking the first rate at forty cents and from that down. What do you say Mr. Martin as to whether there is any effective water competition by lake and rail at St. Paul through Duluth.

Mr. MARTIN: Why, there is the very positive influence on the situation by water competition; with the practice merchants and shippers have of holding back a little in the spring for the opening of navigation when it is within two or three weeks of the opening. The navigation season the great lakes so far as its effect on commerce is concerned, is practically eight months out of the year. The rates from Duluth to all territory directly west of Duluth and in a large measure toward the south and southwest are exactly the same as the rates from Minneapolis and St. Paul, so that the water rate to Duluth establishes a condition which is very serious to jobbers in the Twin Cities unless it is as near as possible met by other rates that they can enjoy. They enjoy the lake rates themselves to a very great extent but the—

1862 Mr. LYNDE: Go ahead, go on.

Mr. MARTIN: But the all rail rates must be somewhere near that or they would, by one device or another, as they do now, make the very largest percentage of their shipments by water.

Mr. LYNDE: Well, there is in effect then a large movement by the lake and rail rate into the Twin Cities, is there not?

Mr. MARTIN: Very large, yes, sir.

Commissioner HARLAN: Is there a large movement of the first class merchandise?

Mr. MARTIN: Yes, sir, all summer the dry goods houses use the lake and rail carriage, I think, by one route or another.

Commissioner HARLAN: For all the classes?

Mr. MARTIN: For all the classes, from the seaboard we are speaking of, where the condition is such as this, and every one of them, I think, on merchandise as hazardous and bulky as toys handled in that way, several large houses up there use that method.

Mr. LYNDE: Can you state to the Commission, Mr. Martin, as to what proportion of the tonnage into the Twin Cities will move
1863 by lake and rail during the summer season, or have you any figures on that?

Mr. MARTIN: Meaning from what is known as trunk line territory?

Mr. LYNDE: Yes, I mean from the seaboard, I should have added that.

Mr. MARTIN: I think fully seventy-five per cent in tonnage, I don't know but more.

Mr. LYNDE: I think that is all I care to ask. No, there is one more question. What is the lake and rail rates through Duluth to St. Paul from the seaboard?

Mr. MARTIN: Eighty cents.

Mr. LYNDE: Eighty-three cents, isn't it?

Mr. MARTIN: It was raised a cent or two this year for the insur-

ance; eighty-one or eighty-two cents, possibly eighty-three cents, I don't remember.

Mr. WEBSTER: Between what points?

Mr. MARTIN: Between New York and St. Paul via the Lakes.

Commissioner CLARK: Anything further?

Mr. LYNDE: No.

Commissioner CLARK: You may cross examine.

1864 Cross-examination:

Mr. ATWOOD: Is this a copy of one of the files of the Interstate Commerce Commission (referring to a document)?

Mr. MARTIN: Yes, sir.

Mr. ATWOOD: Do you know when it was filed? It bears the words here, "issued January 18, 1897," but nothing to indicate when it was filed with the Commission. 1897, perhaps I said 1887. Do you know when it was filed with the Commission?

Mr. MARTIN: I don't know, sir.

Mr. ATWOOD: Do you know if it was filed with the Commission?

Mr. MARTIN: Why, I do not, because I did not file it myself.

Mr. ATWOOD: Is this a copy of some original that you have in your possession?

Mr. MARTIN: That Copy was made in my office from an original, at least I gave instructions—

Mr. ATWOOD: That was on file in your office?

Mr. MARTIN: —to have two copies made of it for another party, and I have not seen them since. I assume they are.

1865 Mr. ATWOOD: And is this a complete copy of the original in your office?

Mr. MARTIN: It should be, yes, sir.

Mr. ATWOOD: And is it—well, is there on your original any notation indicating the time of filing the original?

Mr. MARTIN: My instructions were to make an exact copy.

Mr. ATWOOD: And presumably there is no such notation then?

Mr. MARTIN: I should say that that is an exact copy, barring typographical errors.

Mr. ATWOOD: What was the rate prior to 1897 when they established this rate through Sault St. Marie?

Mr. MARTIN: A dollar and thirty-five cents.

Mr. ATWOOD: For the whole or your proportion, which?

Mr. MARTIN: No, the through rate to St. Paul.

Mr. ATWOOD: What was the proportion west?

Mr. MARTIN: With us?

Mr. ATWOOD: Yes, how much did you get from the breaking point, from Sault St. Marie west to St. Paul?

1866 Mr. MARTIN: Well, our roads divided under an arrangement with the connections, with our connections there from New York and Boston.

Mr. ATWOOD: At that time, what was the proportion that you got out of that \$1.35 rate?

Mr. MARTIN: Shall we disclose those divisions?

Commissioner CLARK: I think so.

Mr. MARTIN: We divided on practically a thirty-three and a third per cent basis.

Mr. ATWOOD: Thirty-three and a third per cent of \$1.35?

Mr. MARTIN: Yes, sir.

Mr. ATWOOD: Can you approximate that in cents without stopping to compute it?

Mr. MARTIN: Not as easy as you can.

Mr. ATWOOD: Forty-five cents, isn't it?

Mr. MARTIN: I will figure it out there if you cannot.

Mr. ATWOOD: It is forty-five cents, isn't it? My arithmetician here tells me it is.

Mr. MARTIN: I have confidence in him and I will say yes.

Mr. ATWOOD: Forty-five cents. The reduction then was five cents on west of the straits to St. Paul?

1867 Mr. MARTIN: The reduction was twenty cents on the through rate; that never affected anything but the through rate.

Mr. ATWOOD: But as a matter of fact the proportion west from the straights, on that proportion the reduction was five cents, if it was prior to that time, was it not? Am I right about that?

Mr. MARTIN: While it will figure that way, it was not so in actual results.

Mr. ATWOOD: It don't matter how it is arrived at; if your cofers received that much money, that is a fact isn't it? The fact is that you did get that much money on each hundred weight first class?

Mr. MARTIN: I think so.

Mr. ATWOOD: Now, what was the occasion of the reduction?

Mr. MARTIN: Well, it is quite a long history, but briefly, the desire of the all rail lines to do as much of the business all rail as it could, and in addition to that, the fact that the adjustment for the St. Paul jobbers using the car load classes into St. Paul, and the distributing rates had left them very much to the bad in 1868 their own state.

Mr. ATWOOD: Is that the whole of your answer?

Mr. MARTIN: I can make it very long, but that will do.

Mr. ATWOOD: It is for you to determine how long you will make it.

Mr. MARTIN: That will do me.

Mr. ATWOOD: I beg pardon.

Mr. MARTIN: That will do me.

Mr. ATWOOD: Oh, I did not understand you.

Mr. MARTIN: I mean that is satisfactory to me.

Mr. ATWOOD: That is all I want to know. You are the one to be satisfied with your own answer. When did you again take the initiative, if at all, in the reduction of rates? You say you did it in 1897 when this five cents was taken from the forty-seven cents?

Mr. MARTIN: The all rail rate has been the same ever since.

Mr. ATWOOD: Has that been the amount exacted on all the business running over your line since that time, first class?

Mr. MARTIN: What, a dollar and fifteen cents?

Mr. ATWOOD: A dollar and fifteen cents, yes.

1869 Mr. MARTIN: No, sir.

Mr. ATWOOD: Well, in what instances have you failed to adhere to the public schedule?

Mr. MARTIN: None. I did not say we did not adhere to the public schedule. You asked me if we received a dollar and fifteen cents. It is very well known that there is a differential route which has been in existence for a great many years, made by our company out of New York by the Ontario & Western, and out of Boston by the Boston & Maine, making one dollar and five cents first class.

Mr. ATWOOD: One dollar and five cents first class?

Mr. MARTIN: Yes, sir.

Mr. ATWOOD: Of which you get how much?

Mr. MARTIN: That differential is also applicable to Chicago and through Chicago.

Mr. ATWOOD: Well, what proportion of that dollar and five cents do you get?

Mr. MARTIN: We get our agreed proportion from our connections.

Mr. ATWOOD: How much is that in cents per hundred pounds, first class?

Mr. MARTIN: I have told you it is about thirty-three and
1870 a third per cent.

Mr. ATWOOD: Then do I understand that the rate is a dollar and fifteen cents as published in the schedules, but a differential, as you call it, reduced to a dollar and five cents?

Mr. MARTIN: If you understand that correctly,—if you understand that, you do not understand it correctly.

Mr. ATWOOD: Now, please be so good as to set me right.

Mr. MARTIN: All your clients know about that. There is a tariff at a dollar and fifteen cents and a tariff at a dollar and five cents. The rate by one route being a dollar and fifteen cents, by what is known as the differential being a dollar and five cents.

Mr. ATWOOD: And your line, is it both a differential and a non-differential line?

Mr. MARTIN: Yes, sir.

Mr. ATWOOD: And are those rates, the ones that you have just named, a dollar and five cents per hundred weight, New York to St. Paul, differential, and a dollar and fifteen cents per hundred weight first class into St. Paul non-differential, if I may em-

1871 ploy that term—

Commissioner CLARK: Standard.

Mr. ATWOOD: Standard, are those the rates that obtain and have obtained ever since that time?

Mr. MARTIN: Yes, sir, I don't remember that there has ever been any change in the all rail rates for ten years.

Mr. ATWOOD: Have these rates been always exacted during that time, or have there been concessions made to some of your patrons?

Mr. MARTIN: Nothing at all to equal those we understand were developed at Kansas City.

Commissioner CLARK: Mr. Martin, we won't go into that.

Mr. MARTIN: That is not the proposition—

Commissioner CLARK: We will not ask this witness to say in these proceedings whether they did or did not depart from the published tariff rates. You may ask him anything you like about the published rates.

Mr. ATWOOD: If that is the position of the Commission, I will not ask anything about that.

Commissioner CLARK: We are not going to adjust the rates now on the basis of what may have been done in the past.

Mr. ATWOOD: Now, you spoke of the water competition, Mr. Martin?

1872 Mr. MARTIN: Yes.

Mr. ATWOOD: That means, as I understand it, that when the lakes were open, and the lake boats were in active operation, it has a tendency to diminish the rates by all rail lines.

Mr. MARTIN: It does it very materially, yes, sir.

Mr. ATWOOD: And when the lakes are closed to navigation, by reason of the seasons, then the rates would be up on the all rail lines?

Mr. MARTIN: It is the only rate that is open when the lake is closed.

Mr. ATWOOD: And does not the fact that you have that monopoly tend to advance the rates during the closed season?

Mr. MARTIN: No, sir, they have not changed for ten years, as I stated.

Mr. ATWOOD: Then Mr. Martin, if it is a fact that the rates have gone down in the winter and gone up in the summer on the all rail lines, have you any explanation as to why that should be so?

Mr. MARTIN: I have stated distinctly that the rate has not been changed.

1873 Mr. ATWOOD: I say, assuming for a moment, as there is testimony to indicate, that the rates had gone up during the winter months—

Mr. MARTIN: Why they change from the lakes to the all rail.

Mr. ATWOOD: Now, we are discussing the all rail rates alone.

Mr. MARTIN: Yes.

Mr. ATWOOD: And the manner in which it is affected by water competition. You say that the tendency of water competition is to send the all rail rates down in warm weather?

Mr. MARTIN: I did not say so.

Mr. ATWOOD: Then I misunderstood you.

Mr. MARTIN: You absolutely did.

Mr. ATWOOD: And it is equally true that actions of water competition during the season does not tend to advance the rates by the all rail route, is it?

Mr. MARTIN: It does not change.

Mr. ATWOOD: It does not change. Then what is the effect of the water rate if it don't either send the prices up of all rail, when it is closed, or send them down when it is open?

1874 Mr. MARTIN: Well, if you were a merchant you wouldn't ask that. The warehouses at Duluth and different points on the lake today are full and will be, for the last two weeks that are left

to them, full to the roof of certain classes of business, wire and nails, and barbed wire, cement and a great many commodities that are brought up, and they try and make them last as long as they can, and have them available for the movement in the spring, before the lakes open.

Mr. ATWOOD: And what effect does that have as you believe on the rates?

Mr. MARTIN: It doesn't have any effect on the rates; it has on the carriers. That condition was a reason for lowering the rates. You take in November when the hazards are a little more on the lakes, there has been some accidents, and it is getting near the holiday trade, and some shipments are delayed, and they are commencing in November or sometime in October to use the all rail rate and pay the higher rate, but if the difference is too much they would stay with the boat until the last boat was up.

Commissioner CLARK: Do I understand, Mr. Martin, that as the close of navigation approaches, large quantities of traffic that 1875 moves via the lakes is stored, and forwarded by rail after navigation closes?

Mr. MARTIN: Yes, sir.

Commissioner CLARK: And that in the early spring months they begin concentrating at the ports by rail for movement by boat after navigation opens?

Mr. MARTIN: Well, they do some concentrating on the docks, but the concentration may back up to some extent to the factory. They will just tell them to hold the shipment back for the opening of navigation.

Commissioner CLARK: Well, then, do we understand that your contention is that this effect of the rail and water rates is felt during the season when the boats are not actually moving, and that if the all rail rates were higher than they are, the all rail lines would do less business, and the rail and water lines more business?

Mr. MARTIN: Absolutely they would, they would hold back longer in the spring, and ship up closer in the fall, and with the difference narrowed down as it is now, all hurry shipments or delayed shipments that do not reach the lake port in time, or so close to it that it won't get through, they will divert them to the all rail lines because 1876 it does not cost them very much more, especially on the lower classes.

Commissioner HARLAN: Do they store any commodities over winter waiting for the opening of navigation?

Mr. MARTIN: Oh, no, sir.

Commissioner HARLAN: Commencing now, we will say?

Mr. MARTIN: No.

Commissioner HARLAN: Commencing with the close of lake navigation.

Mr. MARTIN: No, the shipments are brought up during the navigation and stored in buildings not to go out during the winter. Soda ash and a great many commodities where the freight per ton cuts a figure are held at the west end of the lakes, and of course grain east-bound goes into the elevators, and flour into the store sheds east.

Mr. ATWOOD: When did the competing lines meet your cut made in 1897, the one you have just been talking about?

Mr. MARTIN: Oh, it is my recollection that it was right at the time. Might have been a little difference in the time when their tariffs took effect. That is over ten years ago. I was going 1877 to say, without looking up the dates or anything, I would say that it was within a very short time.

Mr. ATWOOD: Have you any recollection of there being an advance of all rail rates in June, June 20, 1899, from forty cents to fifty cents, which continued until February, 1901? First class I am talking about all the time.

Mr. MARTIN: Why, no, I don't remember that now.

Mr. ATWOOD: Have you any recollection of an anomalous situation being presented, of a reduction in the rate back to forty cents in mid-winter of 1901, in February?

Mr. MARTIN: No, I haven't any recollection of it.

Mr. ATWOOD: The reduction in mid-winter by the all rail route would not indicate that the water controlled that action, would it, Mr. Martin, in mid-winter; when the lakes are closed, a reduction in the all rail rates would not indicate that it was caused by water competition, would it?

Mr. MARTIN: No, except it would not be very long until——

Mr. ATWOOD: That is very true, but the particular occasion 1878 of which we are speaking about would not be covered by water, and if there was an advance in mid-summer when the lakes were open and boats were in motion, it could hardly be said that that advance was the result of water competition; that is true, isn't it?

Mr. MARTIN: Well, if there was, I guess that is true.

Mr. ATWOOD: That was in June, 1901?

Redirect examination:

Mr. LYNDE: I suppose they may have changed the basis of rates, of the lake and rail rates at the same time, Mr. Martin, isn't that possible?

Mr. MARTIN: Why, they very often made changes in the lake and rail rates during the season in past years.

Mr. LYNDE: This water competition that you have described, did it affect the action of your lines in 1897 in putting in effect this twenty cent rate?

Mr. MARTIN: Yes, sir.

Mr. LYNDE: That is all.

Commissioner CLARK: Since that rate was established in 1897, Mr. Martin, has there been to your recollection or knowledge any change in either the all rail or lake and rail rates that was not accompanied by a concurrent change in the others? In other 1879 words, have they maintained an established differential between the two?

Mr. MARTIN: Well, formerly there was an established tariff; it was quite a number of years ago, and without consulting our records,

all of which I think are published—I mean they are filed with the Commission and well known, I cannot remember whether any changes took place after the establishing of this dollar and fifteen cent scale standard, which affected the lake and rail rate or not. The lake and rail rate was established a number of years ago at seventy-five cents from New York, then raised to eighty cents, and this year on account of the lake lines assuming the marine insurance, advanced sufficiently to cover that, one or two cents on most of the classes.

Commissioner CLARK: You don't remember whether or not this establishment of a dollar and fifteen cent rate on the standard lines was followed by any change in the rates on the lake and rail route?

Mr. MARTIN: I can't remember without looking up the records which came down first. The lakes and rail came down I think from a dollar and five cents or a dollar and three cents, down to 1880 seventy-five cents, or it was ninety cents, I don't remember. I don't remember which was first.

Mr. ATWOOD: When were the application sheets begun to be employed as a proclamation of your rates west from St. Paul?

Mr. MARTIN: Application sheets as a proclamation?

Mr. ATWOOD: Yes, specifying that the rates of certain lines—if I have been unfortunate in the selection of terms—I mean an application sheet in which you referred to the rates of some other lines as being the ones that you would adopt?

Mr. MARTIN: Well, I guess it is my misfortune in not understanding you.

Commissioner CLARK: When did you begin publishing your rates by issuing a tariff which stated that the rates obtaining for all rail lines from Chicago west would apply by your line, and see your rates?

Mr. MARTIN: I don't remember, I don't remember about that date.

Mr. ATWOOD: That is the way in which it is done now?

Mr. MARTIN: No, no.

Mr. ATWOOD: Do you have an independent tariff now on file with the Interstate Commerce Commission or do you make known 1881 to the world your tariff by reference to other rates—the reference to other roads, the tariffs of other roads.

Mr. MARTIN: We try to publish our tariffs strictly in accordance with the wishes of the Commission, the same as every one else.

Mr. ATWOOD: Yes, but it is quite within the Commission's rule, as I understand it, to allow you to adopt the tariffs of another road, if you desire so to do, but my understanding is that instead of using a specified tariff, you adopt the tariffs of other roads and make a proclamation of that, or what has been called here application sheets. Is that right or wrong?

Mr. MARTIN: That is wrong because it is wrong more times than it is right, Mr. Atwood.

Mr. ATWOOD: How about it now?

Mr. MARTIN: That is what I say, you are wrong now.

Mr. LYNDE: Do you have a tariff in effect now or do you have an application sheet in effect?

Mr. MARTIN: We have a tariff. There is no need of prolonging this, but I think I can explain what I mean by that, if you wish.

Mr. LYNDE: Go ahead.

Mr. MARTIN: For instance, the western lines or the central freight association lines publish tariffs from all Pennsylvania stations, for instance, to St. Paul and Minneapolis. Those rates to Mackinaw City and certain points, we will say, are the same as Chicago or whatever the rate is, and we have had a publication in the past calling attention to the fact, which was a great one, that those rates also applied by Mackinaw City and the Soo Line. I think that is what you mean by an application sheet.

Mr. LYNDE: The only thing that was in my mind was to ascertain, if you know, when you did that, if you did do that. You say sometimes you have done it. In other words sometimes you would have a tariff and sometimes that sheet. Am I right about that.

Mr. MARTIN: No, you are not right.

Mr. LYNDE: Mr. Atwood, have you a copy of any such application sheet as you claim here?

Mr. ATWOOD: You can get that from the testimony. I *my* myself have not.

Mr. McVANN: What is the question?

Commissioner CLARK: Mr. McVann, will you please make a statement as to what you testified to as to the manner in which the Soo Line made its rate from Sault St. Marie to St. Paul, on the publication which you examined at Washington?

Mr. McVANN: Soo Line tariff G. F. D. No. 2247. I. S. C. C. No. 239. Effective August 9, 1897. It begins in this way: "Proportional Joint Freight Tariff, applying between the Soo, Mackinac, Gladstone, Menominee, Mich., or Kewanee, Wis. and Minneapolis, St. Paul and Stillwater. This tariff makes effective the same rates as are named in J. F. Tariffs Nos. 9 and 10 effective Sept. 1, 1897; No. 17, effective August 2nd, 1897 (Issued Chicago July 26, 1897); Special Circular No. 16, effective March 15, 1897, and No. 23, July 12, 1897, published by J. W. Midgely, or as they may be amended or reissued. Cancels July 6, 1898 by I. C. 433. I. C. C. No. 239 is first general tariff of Soo Line in I. C. files embodying this principle," and that principle is carried down with various other principles to a tariff, or as I call it an application sheet,—that is my own phrase—in effect at the time I examined these tariffs in the office of the Commission last summer, so far as the files disclosed.

They might not be in effect, but the files show they were. You do not care for the rest of the numbers, do you?

Mr. LYNDE: Oh, no.

Mr. ATWOOD: That is all.

Commissioner CLARK: Then as a matter of fact, this publication that you examined was a notice that the rate in Mr. Ridgeley's publications were effective via the Soo Line?

Mr. McVANN: The proportional rate. I then went to examine the tariffs referred to in these application sheets to see what these rates were, and the numbers referred to these tariffs issued by Ridgeley and then by Parker and then by Mahoney, naming the propor-

tional rates from Chicago, St. Paul and Minneapolis, referred to by numbers. That was the basis of my statement.

Mr. LYNDE: Now, Mr. Martin will you explain how your line came to issue that sort of a tariff?

Mr. MARTIN: The proportional tariff that he refers to?

Mr. LYNDE: The one that Mr. McVann read as to his notes.

Mr. MARTIN: Why, I should say that we published it—it is not very different from the one we had here—to have proportional rates from those junctions the same as the Chicago lines had from their junctions.

1885 Mr. LYNDE: Do you notice the fact that the junction points that were named in that communication are other than, and in addition to those that are named in the tariff of January, 1897?

Mr. MARTIN: Well, I noticed one lake port in there in January, that there was no necessity for the lake port, and that was Gladstone. Our business from the east via the Sault St. Marie is all detailed there; we had no necessity for a proportional tariff from there.

Mr. LYNDE: Any further questions of Mr. Martin?

Mr. ATWOOD: No.

1886 H. M. PEARCE, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

Mr. LYNDE: State your name, please?

Mr. PEARCE: H. M. Pearce.

Mr. LYNDE: With what road are you connected, Mr. Pearce?

Mr. PEARCE: Chicago, St. Paul, Minneapolis & Omaha.

Mr. LYNDE: In what capacity?

Mr. PEARCE: Freight traffic manager.

Mr. LYNDE: How long have you been connected with that company.

Mr. PEARCE: About twenty-four years—twenty-five years.

Mr. LYNDE: In what capacity were you connected with them in 1897?

Mr. PEARCE: I was General Freight Agent, as I recall it.

Mr. LYNDE: Have you any knowledge of the condition with respect to rates from Chicago to St. Paul at that time, I mean prior to the time when the Soo Line issued and put into effect the forty cent rate from the Soo to St. Paul and Minneapolis?

Mr. PEARCE: In a general way, yes. The rate into the northwest fluctuated quite violently for several years prior to 1897. Along in perhaps the summer or fall of 1897 the rates were restored to what is termed a normal basis, sixty cents, as I remember, it at this late day, from Chicago to St. Paul. Those rates prevailed until along in January; those rates prevailed on business from the seaboard as well as Chicago local business, as I now recall it, until along in January, when the Soo made its reduction and the pro-

portional scale or the through rates were reduced via Chicago at about the same time.

Mr. LYNDE: Do you recall the action that was taken by the Chicago lines when the Soo announced its intention of putting in effect a forty cent proportional rate on seaboard business from the Soo to St. Paul?

Mr. PEARCE: I remember that there was a meeting at that time to endeavor to induce them not to make that reduction.

1888 Mr. LYNDE: Did the Chicago lines meet that reduction, that action of the Soo?

Mr. PEARCE: Yes, sir.

Mr. LYNDE: Can you state about the date?

Mr. PEARCE: Well, along about the first of February, I don't recall the exact date, some of the lines met it earlier than others, but it was all approximately about the first of February.

Mr. LYNDE: And what lines met it earlier than the others?

Mr. PEARCE: My recollection today is the Chicago Great Western, it is now known as, and the Wisconsin Central.

Mr. LYNDE: Did either of those two roads have at that time lines to the Missouri River? Did the Chicago Great Western then reach the Missouri River with its rails?

Mr. PEARCE: I don't remember as to that. Of course the Wisconsin Central never has built to the Missouri River. My recollection is, however, that the Great Western had built to Kansas City at that time, but I am not positive.

Mr. ATWOOD: What year?

Mr. PEARCE: 1897.

1889 Mr. LYNDE: This is 1897.

Mr. PEARCE: That it was built there.

Mr. LYNDE: Yes, and then later the other roads followed.

Mr. PEARCE: Yes, within a very few days.

Mr. LYNDE: Well, I am going to ask you now the question, Mr. Pearce, as to whether or not it was the fact that it was the action of the Soo Line in putting in effect this twenty cent proportional rate from the Soo to St. Paul and Minneapolis on seaboard business, that led to the reduction in proportional rates from Chicago to St. Paul and Minneapolis at that time?

Mr. PEARCE: Yes, sir.

Mr. LYNDE: What do you say as to whether there is an effective water competition by the lake and rail rate into the Twin Cities on this seaboard business?

Mr. PEARCE: There is a very active competition, very. Lake navigation prevails for seven months in the year, transporting business from Buffalo to Duluth, a hundred and fifty miles from St. Paul and Minneapolis, and the effect of that competition is felt to a large extent throughout the year on account of the business that is moved to the western lake ports, and stored for distribution, and also the tendency to hold business back for the opening of navigation.

1890 Mr. LYNDE: Your road participates in that traffic from Duluth to the Twin Cities, does it not, or Superior?

Mr. PEARCE: Yes, sir.

Mr. LYNDE: Can you state as to whether there is a considerable volume of the merchandise traffic coming over your line from the lakes?

Mr. PEARCE: There is quite a large volume of the business, yes, sir.

Mr. LYNDE: What in your opinion, Mr. Pearce, will be the effect of doing away with the Mississippi River as a basing point on freight rates in this western territory?

Mr. PEARCE: Well, you appreciate that we have no rails in that territory, that we are not in that business. You are simply asking for my opinion?

Mr. LYNDE: Yes.

Mr. PEARCE: My opinion is that it would result in very — reduction into the territory west of the Mississippi River.

Mr. LYNDE: Well, then in other words—pardon me—

1891 Mr. PEARCE: I can see no justification at Kansas City or

Omaha for the lines ignoring the long and short haul clause. There is no element of competition that suggests to me there to warrant that, and if they view it as I do, it would result in material reductions which would be very far reaching in their effect.

Mr. LYNDE: Assuming that would follow a corresponding reduction in rates from Chicago to this western territory, what would be the effect of that as to rates into Wisconsin, Minnesota and the Dakota territory?

Mr. PEARCE: It would mean a readjustment of the rates to Minnesota, Dakota and Iowa territory.

Mr. LYNDE: Now, explain why?

Mr. PEARCE: Take St. Paul and Minneapolis, on account of their location. The rate today from St. Paul to Soo City is sixty cents first class, two hundred and seventy miles. I question if we would be able to resist the pressure for a modification in that rate, with a rate from Chicago for over five hundred miles of approximately the same figure.

Mr. LYNDE: The Chicago rate would also extend up to the northern lake ports, too, would it not?

1892 Mr. PEARCE: Not the Chicago-Missouri River rate.

Mr. LYNDE: I mean the rate into this Minnesota and Iowa territory.

Mr. PEARCE: Would extend—

Mr. LYNDE: Yes, they do extend now, don't they?

Mr. PEARCE: No.

Mr. LYNDE: Well, explain that situation.

Mr. PEARCE: On the Omaha rates there are three real governing factors in the making of our rate; the rate from Chicago to Duluth, Chicago to St. Paul, and Chicago to the Missouri River, and in addition to that there is one other, and that is the adjustment at Mankato, fixed by the Interstate Commission some years ago, making the rate there 110% of the Chicago-Waterville rates, which are the Chicago and St. Paul rates. Now, a reduction in the rate from Chicago to the Missouri River would carry with it a reduction from

Chicago to Soo Falls. That would extend as far on our line as Worthington, Minnesota, at least; in fact I am afraid it would lead to a general readjustment all around.

Mr. LYNDE: Isn't it a fact that it necessarily would do that?

Mr. PEARCE: Sir?

1893 Mr. LYNDE: Isn't it a fact that it necessarily would do that?

Mr. PEARCE: Yes, sir.

Mr. LYNDE: I have no further questions.

Commissioner CLARK: Any questions on your side, any further questions?

Mr. BARLOW: I would like to ask Mr. Pearce a question.

Commissioner CLARK: All right, Mr. Barlow.

Mr. BARLOW: Assume, Mr. Pearce, you have no line from here to the Missouri River, but assume the \$1.10 rate goes into effect from New York to Kansas City. The petition asks for a proportional reduction to other interior points. Assume that that makes the first class rate from Buffalo say eighty-three or eighty-four cents. In your judgment can the present scale of rates from Chicago be maintained?

Mr. PEARCE: I think not, Mr. Barlow.

Mr. LYNDE: Just in that connection I will say that the complaint here refers to exhibits, and I presume that is the proportional rate that you refer to, is it not?

Mr. BARLOW: I beg pardon.

1894 Mr. LYNDE: You asked about the \$1.10 proportional rate, and proportional reductions to interior points, that is away from the seaboard?

Mr. BARLOW: Yes, sir.

Mr. LYNDE: There has never been served on us any of these exhibits, and I do not know what they refer to. There are a lot of exhibits in the complaint that have never been served on us at all, and I do not know what they are. I assume it is just a mere statement of what is contained in the complaint, but from that statement I assume that those exhibits contain something else than is stated in the complaint.

Mr. ATWOOD: The exhibits are copies of the tariffs on file giving the numbers of them.

Mr. LYNDE: Oh, I admit that.

Mr. WEBSTER: The rate from New York to St. Paul is \$.87, that is admitted in the answer.

Commissioner CLARK: Gentlemen, we cannot get this record straight, we cannot keep it straight when we have three or four talking at once. Let me say, Mr. Barlow, that according to this record Exhibit A is western trunk lines joint through freight tariff, No. 786.

1895 I. C. C. Tariff, No. 741.

Mr. BARLOW: The exhibit I have reference to gives Rochester, Pittsburg, Elmira and Syracuse.

Commissioner CLARK: "Naming through rates on classes and commodities from Atlantic seaboard and points west thereof, east of the western termini of trunk lines, to St. Paul, Minneapolis, Minnesota

Transfer, Winona, Duluth, Minnesota, La Crosse, Superior and Ashland, Wisconsin."

Mr. BARLOW: From where?

Commissioner CLARK: It quotes rates from Boston, Portland, Providence, Hartford, Baltimore, New York, Philadelphia, etc.

Mr. BARLOW: Elmira, Rochester and Syracuse also, and the prayer asks that the rate shall not exceed \$1.10—I speak of first class—with a proportionate reduction from eastern producing points as shown in Exhibit A.

Commissioner CLARK: Well, Exhibit A is that Western Trunk Line tariff No. 786. You may cross examine.

1896 Cross-examination:

Mr. ATWOOD: Prior to this change that has been talked about by Mr. Martin, what was the local between Chicago and St. Paul?

Mr. PEARCE: Well, as I said a while ago, the rates fluctuated a good deal there during a period of several years after the Interstate law. The normal scale, as I remember it, at this late day was the sixty cent scale.

Mr. ATWOOD: Yes.

Mr. PEARCE: But during that time I think it got down to forty cents. I know I remember distinctly at one time they got down to twenty cents on seaboard business.

Mr. ATWOOD: That was some time prior to 1897?

Mr. PEARCE: That was prior to 1897, yes, sir.

Mr. ATWOOD: When would you locate what you call abnormal conditions, at some year prior to 1897 or immediately preceding 1897?

Mr. PEARCE: As to the exact date——

Mr. ATWOOD: Oh, approximate it.

Mr. PEARCE: As I recall it,—bear in mind that you have gone back a good piece in ancient history, and I have no notion as to what was desired here. Along about 1887 there were a good many new lines built into the northwest, the C. B. & N., was built, now the C. B. & Q., the Soo was built, the Great Western was built and I think the Wisconsin Central, and there was great strife for that business up there. During that time I noticed in looking over some of the rate cards of the Soo Road that the all rail rate got down as low as fifty-one cents from New York to St. Paul, and then it was seventy-one cents, and I assume that when this twenty cent rate was put in there, it was put in by some line that hopes or desired to meet by Chicago what was in effect by the Soo.

Mr. ATWOOD: And how long would you say then this sixty cent local had been in existence dating back from now?

Mr. PEARCE: I think but a few months, as I recall it. I may be entirely wrong, but my recollection is that it was along in the summer or early fall that the road concluded they had been going a pretty lively pace and that it was time to call a halt, and see if something better could not be brought about.

Mr. ATWOOD: After the establishment of the \$1.15 rate there was in existence a local, sixty cent.

1898 Mr. PEARCE: Sixty cents, yes, sir.

Mr. ATWOOD: Then came the reduction from \$1.35, was it first class, to \$1.15?

Mr. PEARCE: Why the standard lines as my recollection is it was \$1.35; \$.75 and \$.60.

Mr. ATWOOD: Now, then it was a combination of locals on Chicago that made up this through rate at that time?

Mr. PEARCE: That made the through rate at that time, yes.

Mr. ATWOOD: Then came this cut of twenty cents, bringing the first class rate down to \$1.15.

Mr. PEARCE: Yes.

Mr. ATWOOD: And prior to that time, as you say, for at least some months there had been established this local we have mentioned of sixty cents?

Mr. PEARCE: Yes.

Mr. ATWOOD: Now, then, what change was made in that local as a result of the twenty cent cut reducing it to a dollar and fifteen cents?

Mr. PEARCE: I don't recall that there was any change made. There was more or less talk about it, I remember, but I cannot now recall that any reduction in the local rate was made.

1899 Mr. ATWOOD: And it remains the same now?

Mr. PEARCE: That, of course, is a matter of record that can be easily determined. I am speaking from my memory entirely.

Mr. ATWOOD: And what situation is there between Chicago and the Missouri River that should cause you to think there would be such a turmoil resulting from the reduction of the through rate when our experience in St. Paul indicates there should be none?

Mr. PEARCE: There is this difference, the law clearly provides the right to ignore the long and short haul clause under proper circumstances and conditions. Now, I feel personally that the conditions are entirely different at St. Paul from what they are at Kansas City. We have got rail competition from Canada, we have water competition seven months in the year—

Mr. ATWOOD: Yes.

Mr. PEARCE: That would in my judgment justify the ignoring of the long and short haul clause there where it would not at the Missouri River?

Mr. ATWOOD: Well, the Commission does not recognize any-
1900 thing but water competition and Canadian competition to be effective, does it?

Mr. PEARCE: Yes, the Commission have recognized rail competition, but I hardly think that would apply to the Missouri River with such a large percentage of your business distributed from the Missouri River going immediately west of you into Kansas and Nebraska, where there is no competition from the northwest.

Commissioner CLARK: Anything further of this witness?

Mr. BUTLER: I merely desire to ask Mr. Pearce what classes of freight move by water from Duluth.

Mr. PEARCE: All classes, Mr. Butler.

Mr. BUTLER: And are you able to speak, Mr. Pearce, especially

with reference to dry goods? The Twin Cities have a number of large dry goods jobbing houses, have they not?

Mr. PEARCE: Their knit goods traffic, for instance, is an enormous tonnage, and practically all of that moves very soon after the opening of navigation. It is about the first business that starts, and it is accumulated at St. Paul for distribution along in August or September. The jobber rather holds onto it to see what the credit conditions are going to be, whether he is going to get paid for it 1901 or not. But all classes of business up to this year have been offered for shipment by lake and rail. There have been a great many lemons transported in the past years from New York to St. Paul and Minneapolis, but this year they retired from that business, because of the constant change in their labor. They could not keep men who were skilled as to the piling of lemons. They would pile them on the side and they would bruise a whole lot of them resulting in a damage which they had to bear, and they had to retire from it. A great many apples move that way up to the tenth of September; they won't take them after that. Of course our heavy goods, like cement and sugar and iron articles come by lake and rail, that is the heavy tonnage, but all classes of business are moved that way.

Mr. BUTLER: Just one more question, which I think perhaps may be repetition: Did I understand you to express the opinion that if the prayer of this complaint is granted, that business conditions would necessarily require a readjustment of rates in the territory about the Twin Cities or tributary to them, so as to maintain 1902 the same or similar relations between the St. Paul rates and the Missouri River points rate.

Mr. PEARCE: Yes, I intended to convey the idea that the application of such a scale would make necessary a readjustment of your rates out of your jobbing centers.

Mr. BARLOW: I would like to ask Mr. Pearce one other question: The effect of the condition at St. Paul upon the traffic from Chicago and Milwaukee,—you are somewhat familiar with that, are you not, Mr. Pearce?

Mr. PEARCE: With Chicago and Milwaukee to St. Paul?

Mr. BARLOW: No, the effect of the present situation at St. Paul upon the traffic originating at Chicago & Milwaukee. Isn't it true that a large proportion of the tonnage from Chicago and Milwaukee to St. Paul is carried on commodities rates at less than class rates?

Mr. PEARCE: Yes, iron articles move on commodity rates. Agricultural implements move on commodity rates. I should say roughly it is possibly true that fifty per cent of that tonnage up there will move on commodity rather than class rates.

Mr. BARLOW: Isn't it true that you are constantly being importuned and are constantly being asked to put in commodity 1903 rates from Chicago and Milwaukee in order to keep those two cities in competition with the rail rates, the all rail rates from the east?

Mr. PEARCE: We endeavor to place them on such a basis commercially as to enable them to meet competition.

Mr. BARLOW: Then the situation at St. Paul and Minneapolis

does affect the rate from Chicago and Milwaukee to St. Paul and Minneapolis?

Mr. PEARCE: The situation at St. Paul?

Mr. BARLOW: I mean the rate from the east.

Mr. PEARCE: Affect the rate from Chicago applying on certain commodities.

Mr. BARLOW: On a good many commodities, Mr. Pearce?

Mr. PEARCE: Yes, a good many commodities that are affected.

Mr. ATWOOD: You said it would be bound to produce a readjustment. Now, there is an advantage on the Atlantic stuff destined for St. Paul and the Missouri River, of thirty-two cents in favor of St. Paul now, is there not?

Mr. PEARCE: Yes, sir.

Mr. ATWOOD: Do I understand you to think that the men or the controlling influences that make the rates across the lake or
1904 otherwise, would feel constrained to at once drop thirty-two cents in the event that the Missouri River was put on an equality with St. Paul?

Mr. PEARCE: I said it would require a readjustment from the jobbing centers; that means in my judgment a readjustment from Chicago. That would carry with it perhaps a readjustment from Des Moines, from Cedar Rapids, and from St. Paul and Minneapolis. In other words you would go into Sioux City with \$1.10 rate; that is a Missouri River point. You have got \$1.15 rate into St. Paul. It will cost \$1.75 to go via St. Paul to Sioux City—

Mr. ATWOOD: Just confine it to the matter I inquired about in my last question: have you an opinion, speaking as a rate man, that the traffic powers would feel constrained to reduce the rates at St. Paul thirty-two cents in order to have the same relations exist as now exist?

Mr. PEARCE: I think not.

Mr. ATWOOD: You would not think that that would follow.

Mr. PEARCE: I do not know why it should necessarily follow, but it is the other influences that come after that.

1905 Mr. ATWOOD: That is all.

Mr. LYNDE: Just one question that I omitted: you spoke of the three bases, or three sets of rates as controlling on your line, that is the rate from Chicago to Duluth, Chicago to St. Paul, and Chicago to the Missouri River. These are, as I understand you, the three controlling factors.

Mr. PEARCE: Yes, sir.

Mr. ATWOOD: Well, now, any disturbance in any of those will necessarily result in requiring a readjustment of the other two, is that not so?

Mr. PEARCE: I am not prepared to state that that would necessarily follow. It would depend upon the extent of the readjustment.

Mr. LYNDE: So the rates from Chicago to Duluth, for instance, could be affected or changed without affecting, so far as you are concerned, the rates from Chicago to the Missouri River, is that so?

Mr. PEARCE: Yes. But, the rates from Chicago to the Missouri

River, could not be changed to any serious extent without affecting our rate from Chicago to St. Paul.

1906 Mr. LYNDE: I see; that is all.

Mr. BARLOW: Mr. Pearce, would it not be utterly impracticable to affect the rate from Chicago to Sioux City or Sioux Falls and not affect all the western rates?

Mr. PEARCE: It would affect those because there are a great many rates today into Dakota that are really a combination of the local rate on Sioux Falls.

Mr. ATWOOD: But the reduction at St. Paul did not affect the rates from St. Paul toward the west, did it?

Mr. PEARCE: You mean the forty cent proportional scale?

Mr. ATWOOD: Yes.

Mr. PEARCE: My recollection is that there was no change made in the rates at that time. That will still leave it, if you will allow me to explain, a distribution question from Chicago versus St. Paul, one of them on a seventy-five cent scale in, and the other on a dollar and fifteen cent scale in.

Mr. ATWOOD: That is all.

COMMISSIONER: Then we will take a recess until ten o'clock in the morning, and there is a larger room on the other side of the house on this same floor, a club room, and we will use that tomorrow. I think it will be a little more comfortable possibly than this one.

Adjourned until Tuesday, November 26, at 10 o'clock A. M.

1908 CHICAGO, ILLINOIS, *November 26, 1907.*

The Commission met pursuant to adjournment at 10 o'clock A. M. Present; parties as before.

Commissioner CLARK: Gentlemen, if you will give us your attention, please. Are your St. Joe witnesses here this morning, Mr. Webster?

Mr. WEBSTER: I will be pleased to present a witness this morning, if the Commission please.

H. M. HUNDLEY, called as a witness, having been first duly sworn, testified as follows:

Direct examination:

Mr. WEBSTER: You may state your name and residence.

Mr. HUNDLEY: H. M. Hundley is my name; I live at St. Joseph, Missouri.

Mr. WEBSTER: Will you state your business?

Mr. HUNDLEY: Wholesale dry goods business.

1909 Mr. WEBSTER: Connected with what company?

Mr. HUNDLEY: The Hundley Dry Goods Company.

Mr. WEBSTER: What official position do you hold with that company?

Mr. HUNDLEY: I am president of the company.

Mr. WEBSTER: How many years have you been connected with that company?

Mr. HUNDLEY: Twenty-five years.

Mr. WEBSTER: How many years have you been engaged in the dry goods business?

Mr. HUNDLEY: During that whole time.

Mr. WEBSTER: And in all that time, at St. Joseph?

Mr. HUNDLEY: Yes, sir.

Mr. WEBSTER: Are you familiar with the dry goods houses in your neighboring cities of Omaha and Kansas City?

Mr. HUNDLEY: Yes, I know them.

Mr. WEBSTER: You may state, Mr. Hundley, about the extent of the dry goods jobbing business from those three cities at this time, annually?

Mr. HUNDLEY: Why, it is right at forty million dollars, thirty-nine million or forty-one million, something in there.

1910 Mr. WEBSTER: In that estimate do you or not include retail dealers?

Mr. HUNDLEY: No. You said jobbers.

Mr. WEBSTER: Yes. You may state about the extent of territory the part of the outlying territory through which your company, or other dry goods companies, so far as you know, do business?

Mr. HUNDLEY: Shall I give it by the states?

Mr. WEBSTER: Yes; such description as you think best.

Mr. HUNDLEY: We travel men in Missouri, Indian Territory, Oklahoma, Kansas, Nebraska, part of Iowa, Colorado, South Dakota, Wyoming, Idaho, Utah, Oregon, some in Washington and some in Montana.

Mr. WEBSTER: Now, in the territory which you have just last mentioned, the northwest territory, you come in competition chiefly with jobbing houses from what localities or cities?

Mr. HUNDLEY: Omaha is represented there, St. Paul, Minneapolis and Chicago.

Mr. WEBSTER: And which furnishes your chief competition? I do not mean as to bulk, but as to prices, rather.

1911 Mr. HUNDLEY: I find that the hardest competition we have is from St. Paul and Minneapolis.

Mr. WEBSTER: You may state, Mr. Hundley, why that is so.

Mr. HUNDLEY: The only reason that I have ever been able to figure about it, was on account of the difference in freight rates. They own their goods a little bit cheaper than we do.

Mr. WEBSTER: And you understand that difference to be 32 cents, as between St. Paul and Minneapolis, and Omaha and Kansas City and St. Joe?

Mr. HUNDLEY: That is the difference on first class, yes, sir.

Mr. WEBSTER: Mr. Hundley, you may state what in your opinion would be the result to your business or to consumers if the freight rate to Omaha, St. Joe and Kansas City was reduced so as to put it on an equality with St. Paul and Minneapolis?

Mr. HUNDLEY: I believe if our freight rate was reduced, Judge Webster, that it would have a tendency for us to enlarge our terri-

1912 tories. I know that if we felt we could get on to another territory and hold our end up there with anybody that came along, we would do it, but we do hesitate about going on to a territory, that while we consider it St. Joseph territory, we have a right to go there, we can deliver our goods there as cheap as any other market from a distributing standpoint, but we do not own them as cheap, because we cannot get them into our warehouses as cheap. Our freight service may be practically as good into Idaho as St. Paul and Minneapolis. It may be that the rate from St. Joseph to that point and from St. Paul to that point may be the same, but we have that 32 cents staring us in the face all the time, and the St. Paul house can go out there and go to a merchant that we are selling to, and he has that leeway. He can, in figuring on a bill of dry goods of \$2,000 or \$5,000, he can pick out certain items, and he can make prices five cents below us. He can make that merchant believe his entire line is marked that way, he can take items that the merchant is likely to be posted on, and by pricing them to him, say five cents lower, he does not give away all the money that he is really saving on that bill; he is giving it away on part of it; but we are at a great disadvantage when we come into competition of that kind.

Mr. WEBSTER: Do you know about what the advantage is to the St. Paul or Minneapolis house, that is doing a business, say, of \$5,000,000 a year over a like house in Omaha, St. Joe or Kansas City?

Mr. HUNDLEY: Do you mean the—

Mr. WEBSTER: I mean the saving to the St. Paul house on account of the straight charge.

Mr. HUNDLEY: Yes, I can estimate that; forty thousand to forty-five thousand dollars, that would be in the neighborhood of one per cent on their sales, and in the wholesale dry goods business one per cent is a crucial point as to whether you are making money or not making money. Our business is done cheap; it is done close, and the question of freight rates enters into it very largely.

Mr. WEBSTER: Do you know what the fact is as to whether or not one or more houses in the city of St. Joseph have been compelled to abandon business in that northwest territory on account of this discrimination in freight rates?

Mr. HUNDLEY: I know of two houses that have gone out there, at two different times, and have hired men and intended to stay there, and put their men out, and they would stay six months, ten months, twelve months or fifteen months, and they could not make headway, they could not get the territory up to the point where it paid them to keep the men out there.

Mr. WEBSTER: And the result of the business was what?

Mr. HUNDLEY: They took the men off, they abandoned the territory.

Mr. WEBSTER: And you know about what your freight charges are from your place? Give it if you can on a percentage upon the cost of all merchandise produced or handled?

Mr. HUNDLEY: Oh, well, I could not answer that as to the cost. I can give the percentage to our sales, that is the way we figure it.

Mr. WEBSTER: Very well.

Mr. HUNDLEY: It runs between three and three and one-quarter per cent.

Mr. WEBSTER: And do you know what—

Mr. HUNDLEY: It would be higher than that on the cost of the goods, of course; figuring on the sale price brings the price 1915 down.

Mr. WEBSTER: And your freight charges are about what percentage of the entire cost of doing your business?

Mr. HUNDLEY: Twenty-four or twenty-five per cent.

Mr. WEBSTER: Going back over a period of years, have you been familiar with the freight rates on merchandise such as you handle, in a general way, for the last fifteen or twenty years?

Mr. HUNDLEY: I can say that I have been for the last fifteen years, Judge Webster.

Mr. WEBSTER: You may state then what the fact is as to whether or not there was a reduction or increase in the freight rates on merchandise in the last fifteen years.

Mr. HUNDLEY: Rates are a little higher now.

Mr. WEBSTER: During that period of fifteen years, state what the fact is as to whether or not there has been any considerable increase in the tonnage, and if so to what extent, as near as you can.

Mr. HUNDLEY: There has been a wonderful increase in the tonnage; you are speaking now of the Missouri river?

1916 Mr. WEBSTER: Yes.

Mr. HUNDLEY: There has been a wonderful increase in the tonnage.

Mr. WEBSTER: Do you know at the same time whether or not there have been any new lines of railroad built into these Missouri river cities, so as to naturally increase competition between carriers?

Mr. HUNDLEY: Yes.

Commissioner CLARK: I do not think it is necessary to have any cumulative evidence on those questions. It has been admitted that there have been new lines of railroad and the tonnage has immensely increased and extended, the same as other lines.

Mr. WEBSTER: That is a point not controverted, then.

Commissioner CLARK: I do not think it can be disputed.

Mr. WEBSTER: Do you know what the fact is as to whether or not there is any particular special loss that has been attending the carriage of dry goods?

Mr. HUNDLEY: I have always considered that dry goods were the subject of less loss to the railroads than any other merchandise 1917 they carry; that is the percentage as to the value of the goods; I know our claims in our whole business have been nominal, absolutely nominal.

Mr. WEBSTER: Do you know of any special reasons why, in your judgment the railway companies can and should carry merchandise at less freight rates now than were charges a great many years ago, and if so, you may state what those reasons are?

Mr. HUNDLEY: I can only judge that by the general laws that apply to trade and apply to business. A house doing a business of \$500,000 or \$600,000 has of course certain fixed expenses, and they

cannot sell their goods as cheap as a house doing two and one-half million dollars. The larger the volume, the cheaper the goods ought to be sold, and a railroad carrying the tonnage they did fifteen years ago would naturally have to have more or ought to have more, we would think, than they do today. Their facilities are very much better today, and they handle it very much more economically; figure engines and longer freight trains, and a regular flow of traffic. They know that every day they can load from Chicago, or St. Louis, or the Missouri river a trainload of goods. I do not think that 1918 was true in the old times, and to my mind that is a reason why the goods ought to be handled cheaper per hundred pounds.

Mr. WEBSTER: That is all I care to ask the witness.

Cross-examination:

Mr. LYNDE: This territory of yours which you have described is pretty fairly wide-spread, now, is it not? You include Missouri, Oklahoma, Kansas, Nebraska, Colorado, Iowa, South Dakota, Wyoming, Idaho, Oregon, Washington, and some other points that I did not get. Is there anything in the west that is excluded?

Mr. HUNDLEY: Well, we do not go into California at all, and do not go into the Western part of Washington.

Mr. HUNDLEY: Of what?

Mr. HUNDLEY: Of Washington. We just go into the eastern part of Oregon and Washington. We feel that we are entitled to sell goods from the Missouri river to the Pacific ocean.

Mr. LYNDE: Undoubtedly that is true, but you must expect, and you do, I assume, expect to meet in this vast territory certain 1919 competition, and you do meet that, do you not?

Mr. HUNDLEY: Yes, sir.

Mr. LYNDE: Now, so far as St. Joe is concerned, as compared with Omaha, Omaha must have a decided advantage over St. Joe to a large portion of this territory, does it not?

Mr. HUNDLEY: In what way?

Mr. LYNDE: In the matter of freight rates itself. Do you get the same rate out from St. Joe that Omaha does to all this territory?

Mr. HUNDLEY: Oh, no, not to all the territory.

Mr. LYNDE: So that you have to sell them to meet that competition to begin with in a large portion of this territory; that is true, is it not?

Mr. HUNDLEY: Well, most of the territory where we meet Omaha, we are not at a disadvantage.

Mr. LYNDE: Do you have special territory where you have the advantage over Omaha?

Mr. HUNDLEY: Well, on towns situated such as Omaha, it has got to be a question of give and take. Omaha comes down and wants to sell goods close to St. Joe.

Mr. LYNDE: Is it not true that it is a give and take in that 1920 entire territory? Not only between Omaha and St. Joe, but

St. Joe and Kansas City, and between St. Joe and Des Moines, and between St. Joe and Chicago, and between St. Joe and Sioux

City, and Sioux Falls and any other jobbing point down there, it is give and take through that territory, is it not?

1921 Mr. HUNDLEY: You are bringing a pretty large question in here. You might say that Chicago came up there and that we have had a disadvantage because the freight rates were greater from St. Joe than from Chicago.

Mr. LYNDE: Let us see, is it not more or less true, is not Chicago at a disadvantage in a very large portion of that territory as compared with St. Joe?

Mr. HUNDLEY: Chicago owns her goods cheaper than St. Joseph does.

Mr. LYNDE: In what portion of that territory is that so?

Mr. HUNDLEY: It is true with every dollar's worth of goods Chicago sells out there.

Mr. LYNDE: Your idea is that Chicago can lay down her goods in this territory cheaper than St. Joe can, is that what you mean?

Mr. HUNDLEY: Chicago can sell them cheaper because she owns them cheaper.

Mr. LYNDE: I don't know what you mean by owns them. Suppose you explain to us. Does she buy cheaper?

Mr. HUNDLEY: No, but, she—

Mr. LYNDE: Does she manufacture them cheaper?

1922 Mr. HUNDLEY: But the freight rate to Chicago is 75 cents, and to St. Joseph it is \$1.47.

Mr. LYNDE: You mean that Chicago gets her goods here in Chicago at a lower rate by the difference between 75 cents and \$1.47 than St. Joe does?

Mr. HUNDLEY: Yes.

Mr. LYNDE: But when it comes to the proposition as to the rate out from Chicago into this territory, how does the comparison stand then? Do you wish the Commission to understand that all through this territory Chicago can ship out and can meet St. Joe at an advantage over St. Joe?

Mr. HUNDLEY: They can quote a lower price on their goods in Chicago than we can quote on our goods in St. Joseph.

Mr. LYNDE: That is selling at Chicago?

Mr. HUNDLEY: Selling at Chicago.

Mr. LYNDE: How does that price at Chicago affect the price which the consumer, or purchaser will pay? Somebody has got to pay the freight from Chicago to the point of final destination. That is clear, is it not?

1923 Mr. HUNDLEY: I think as a general proposition, if a merchant buys his goods cheaper next year than he does this year, he will sell them a little cheaper.

Mr. LYNDE: I don't know that I catch the analogy. The point I asked you about is whether or not the buyer of the goods, if he has to pay the freight rate does not take that into consideration in the price when he pays for the goods? In other words, let me put the question in this way, if the retail dealer in this large territory has the choice between buying the same goods at St. Joe and at Chicago, and buying at St. Joe he has a much lower rate from that point to

his store and it cost him much less to get the goods at his store than if he bought them at Chicago, do you mean that he will come to Chicago for that purpose?

Mr. HUNDLEY: Some of them do, sir.

Mr. LYNDE: Well, that certainly is not because Chicago has got an advantage over St. Joe in that territory, is it?

Mr. HUNDLEY: The retail merchant feels in a great many cases he can buy his goods cheaper in Chicago for the reason I stated awhile ago. Take in the five hundred items that would enter 1924 into a five thousand dollar bill of dry goods, he can come into

Chicago and he is out in our territory, and they will take a number or two of underwear and price it to him 25 cents cheaper than we can sell it to him and go down the line with a number of items, and he is convinced he is owning that bill of goods cheaper, and he goes home and may sell it cheaper.

Mr. LYNDE: Does not that amount to this: that the Chicago jobber in order to sell to a retailer out in this territory west of St. Joe would make a price in order to, as I say, sell the retailer in that territory, will make a price which is made to induce the retailer to buy from him, and the Chicago jobber thereby stands the difference, whatever it may be that St. Joe has in its favor in the rate out? Is not that what that amounts to? I may not state it very clearly, but that is my fault.

Mr. HUNDLEY: I do not believe I get just the drift of your question, sir.

Mr. LYNDE: Very possibly not. Does not the Chicago man absorb in the case that I put, absorb the difference in the rate 1925 out?

Mr. HUNDLEY: Not entirely.

Mr. LYNDE: Does the rate out or rate in affect the price of goods at all?

Mr. HUNDLEY: The rate in affects it more than the rate out, sir.

Mr. LYNDE: In what way?

Mr. HUNDLEY: Because we figure it is a part of the cost of the goods.

Mr. LYNDE: That is your cost?

Mr. HUNDLEY: Yes, sir; and if we can own the goods cheaper, we will sell them cheaper.

Mr. LYNDE: Does not the retailer who buys figure on the rate out? He is interested in that?

Mr. HUNDLEY: If you ask me that question, I do not want to run down the average retailer, but I think the average retailer does not figure the freight on his goods.

Mr. LYNDE: So as a matter of fact, the proposition amounts simply to this, that if you get a reduction at St. Joe, it would be just that much more money in your pocket?

Mr. HUNDLEY: No, sir; I do not think so. I think we 1926 would extend our territories and that we would be able to sell our goods cheaper.

Mr. LYNDE: Well, now, just exactly what territory is it that you have failed to embrace at the present writing? You say, perhaps west in Washington. Do you exclude that?

Mr. HUNDLEY: No, I say we are not in west in Washington. We are having an awful hard time to stay where we are in Idaho and Utah.

Mr. LYNDE: I am inclined to think that is not entirely unnatural.

Mr. HUNDLEY: And even in norther- Nebraska, St. Paul and Minneapolis are coming right down into northern Nebraska.

Mr. LYNDE: Now, is that so? Is it not true that the basis of rates in northern Nebraska between Omaha and St. Paul, taking the rate in and the rate out, is largely in favor of Omaha to-day?

Mr. HUNDLEY: The distributing rate, I presume, is some in favor of Omaha.

Mr. LYNDE: Yes, and quite largely, is not that the fact?

1927 Mr. HUNDLEY: But as I said awhile ago, there are lots of retailers who do not figure the difference between a 20-cent rate into their place and a 25-cent rate into their place.

Mr. LYNDE: It does not cut any figure with them?

Mr. HUNDLEY: I say, they do not figure it. It would cut a figure with them if they do, but they do not. There are lots of them that do and that do not. And the St. Paul house doing a five million dollar business, and an Omaha house doing a five million dollar business, the St. Paul house has forty thousand dollars the best of them to start with.

Mr. LYNDE: If that rule applies throughout the country, I do not see for my part Mr. Hundley, how anybody west of New York and the seaboard can do any business.

Mr. HUNDLEY: We are not complaining of our rates as compared with the Chicago rate; we are farther away and we are willing to pay more freight because it is worth more to get the goods there. and in some territories, some parts of our territory, we have advantage over

Chicago in distributing our goods. We can get them there
1928 cheaper, but when we come to the question of St. Paul and Minneapolis, it is worth just as much to haul those goods to St. Paul as it is to St. Joe.

Mr. LYNDE: That is not quite the question——

Mr. HUNDLEY: Because when we get out into Idaho the rate from St. Paul to any common points in Idaho and from St. Joseph to that same point is the same, and they have advantage of 32 cents anyhow.

Mr. LYNDE: Are you through?

Mr. HUNDLEY: Yes, sir.

Mr. LYNDE: That is not true of northern Nebraska, is it, the rate is not just the same?

Mr. HUNDLEY: I could not say just where that would be true. If you——

Mr. LYNDE: Let me ask you about a few other points. It certainly is not true of Missouri or Oklahoma or Kansas, is it?

Mr. HUNDLEY: No; St. Paul or Minneapolis *do* not come down in Kansas and Missouri at all.

Mr. LYNDE: Is it true of Colorado?

Mr. HUNDLEY: I could not answer that question.

Mr. LYNDE: How about Denver, is Denver entitled to any particular territory or consideration?

1929 Mr. HUNDLEY: Denver, Colorado?

Mr. LYNDE: Yes. That is quite a jobbing center too, is it not?

Mr. HUNDLEY: Not very much; no, sir; not in our line.

Mr. LYNDE: Well, is it not a fact that Denver itself has complained through its various merchants and its Commercial Association of the advantages that Missouri River points have over Denver on——

Mr. HUNDLEY: I would not be at all surprised if they have.

Mr. LYNDE: You have heard probably of the fact that Wichita has made complaints, and serious complaints of the advantage Missouri River points have over them?

Mr. HUNDLEY: Yes, sir.

Mr. LYNDE: When you come down into southwestern territory, does Kansas City have any advantage over you?

Mr. HUNDLEY: I think not.

Mr. LYNDE: Is not your rate a little higher down from St. Joe into that territory?

Mr. HUNDLEY: I believe not, sir.

Mr. LYNDE: Your rate does not cut any figure anyway, then, so far as you are concerned, does it?

1930 Mr. HUNDLEY: What do you mean?

Mr. LYNDE: The rate out, I mean.

Mr. HUNDLEY: That depends on the particular merchant we happen to be figuring on. There are some of them that we can talk out of the rate and some that we can not.

Mr. LYNDE: I am trying to get at the general rule. Take it as a general thing, you do not regard the rate out as cutting any factor; it is the rate in, that is all you are concerned with?

Mr. HUNDLEY: I would not say we did not consider the rate out as any factor, I would not go on the record as saying that.

Mr. LYNDE: You would not go so far as that?

Mr. HUNDLEY: No.

Mr. LYNDE: Of course, when you go out to the Pacific coast, you expect to meet water competition out there, don't you?

Mr. HUNDLEY: We have not figured on that yet, because we are not on the coast.

Mr. LYNDE: You have not tried to overcome that?

Mr. HUNDLEY: No, sir.

1931 Mr. LYNDE: I suppose you could do it, as the Chicago man does in the St. Joe proposition, you could sell a little cheaper, could you not?

Mr. HUNDLEY: We feel when we go in a territory that we want to get business, we have got to meet all of the conditions, we have to meet the prices.

Mr. LYNDE: That is about the situation that Chicago is in in this large territory that you speak of, is it not?

Mr. HUNDLEY: Well, they meet prices; yes, sir.

Mr. LYNDE: And those prices are based in some measure, are they

not on the cost to the producer of laying the goods down where he has his store?

Mr. HUNDLEY: No, I think their prices are based on the price of their merchandise in their house.

Mr. HOLDEN: You said you were having a hard time to stay in Utah, if I understood you correctly.

Mr. HUNDLEY: I spoke more; particularly of Idaho and eastern Washington.

Mr. HOLDEN: Your rates into Utah are a good deal *deal* better than the St. Paul merchant's, are they not?

Mr. HUNDLEY: I don't know about Utah, I think the Idaho common point rates are the same, are they not?

1932 Mr. HOLDEN: I am asking about Utah. You mentioned the State, and for that reason I supposed you had the rates in mind. What is your adjustment into Utah as compared with St. Paul and Minneapolis?

Mr. HUNDLEY: I could not answer.

Mr. HOLDEN: Do you do some business in Utah?

Mr. HUNDLEY: Yes, sir; we do some business.

Mr. HOLDEN: In what point?

Mr. HUNDLEY: We work from Salt Lake north, we work the north-east corner of the State.

Mr. HOLDEN: You don't know how you are relatively adjusted to St. Paul?

Mr. HUNDLEY: No, I could not answer that. Where we have the most of our trouble with St. Paul and Minneapolis is in Idaho along the line of the Union Pacific and from there up to——

Mr. HOLDEN: As far as St. Paul is concerned, the rate via St. Paul, as far as Salt Lake seems to be \$3.50, and from St. Joe it seems to be \$3.52. Do you recall that fact now?

Mr. HUNDLEY: I am not posted, so I could not say the figure.

1933 Mr. HOLDEN: How is it that you are not posted with the particular rates to the particular States in which you do business? Have you not looked them up?

Mr. HUNDLEY: It would be impossible for me to look them up.

Mr. HOLDEN: How is your adjustment in Colorado?

Mr. HUNDLEY: I could not answer that as to the figures.

Mr. HOLDEN: Not as to the figures, but are you more favorably or less favorably situated than St. Paul?

Mr. HUNDLEY: I have never heard of St. Paul and Minneapolis in competition with our men in Colorado. I don't know whether they are in the State or not.

Mr. HOLDEN: You do not meet St. Paul?

Mr. HUNDLEY: I have never heard of them.

Mr. HOLDEN: Have you ever heard of them in Utah?

Mr. HUNDLEY: Yes, sir.

Commissioner CLARK: I would like to have Mr. Hundley go a little farther with his statement which you interrupted. He started out to say that the greatest difficulty they encountered in competition with St. Paul was in Idaho.

1934 Mr. HUNDLEY: Well, I did not mean to say that. I say, our principal difficulty has been in the territories beginning in Idaho and going up through eastern Oregon and eastern Washington and the further up there we get the worse off we are.

Commissioner HARLAN: You mean you feel the competition from St. Paul more keenly from that point west?

Mr. HUNDLEY: Yes, sir.

Commissioner CLARK: Is that in any sense due to the fact that in western Washington and Oregon and northern Washington there are direct lines of railroad from St. Paul, whereas your direct line to that territory terminates at Portland?

Mr. HUNDLEY: Why, it seems to me from memory that in southern Idaho and eastern Oregon we have a more direct line.

Commissioner CLARK: I said distinctly western Oregon and Washington and northern Washington.

Mr. HUNDLEY: We are not in western Washington or Oregon. We are only in the eastern part of those States.

Commissioner CLARK: You made the remark that the farther west you went the worse you got. That is not accounted for in any 1935 way by the fact that in the western parts there are direct lines of railroad from St. Paul, whereas the direct line from your point terminates in Portland.

Mr. HUNDLEY: My remark was based on the working of our territories. I might explain it in this way. That we have a territory beginning at Cheyenne, Wyoming. We do not feel St. Paul and Minneapolis to amount to anything until we get to Pocatelle, and the further out we go, it goes out through eastern Washington and Oregon up to Seattle, and, I say the farther we go the harder it is.

Mr. HOLDEN: You do not feel the competition of St. Paul until you get past Cheyenne, or get to Cheyenne?

Mr. HUNDLEY: Get past Cheyenne; yes, sir.

Mr. HOLDEN: Where do you first come in competition with that, if at all in Dakota, South Dakota?

Mr. HUNDLEY: From Deadwood, Bellfouche, Lead and all of the towns in that neighborhood. We also hear of them in northeastern Nebraska and northern Nebraska.

Commissioner CLARK: I take it from what you say that there is a sort of an arc through the Black Hills territory, Deadwood, 1936 Lead and out as far as Cheyenne, you do not feel the St. Paul and Minneapolis competition except in parts of northern Nebraska?

Mr. HUNDLEY: Yes, I think that is true. They have not put men in southern Nebraska, and they have not put men in southeastern Iowa.

Commissioner CLARK: Is this rate adjustment on the whole, Mr. Hundley, such that St. Paul and Minneapolis can as a business proposition enter the territory covered by you say in Kansas and Oklahoma and successfully compete with you?

Mr. HUNDLEY: On the question of price they could; yes, sir.

Commissioner CLARK: What?

Mr. HUNDLEY: They could sell their goods so that they could.

Commissioner CLARK: How is it they do not do it then?

Mr. HUNDLEY: I could not answer that question. They
1937 have been working more in that direction all the time. They
have only within the past two years gotten down into Utah,
southern Idaho and northern Nebraska. It is only two years since
they have begun to work in southern Idaho the way they are now,
and into northern Nebraska. They are encroaching into our territory
all the time, and when they start in there they have a very
distinct advantage over us, the way they own the goods. Any dry
goods man will tell you, "If I can own my goods one per cent
cheaper than the man across the street, I can make it mighty hot for
him."

Commissioner CLARK: Yes, in the same territory, but if the men
that you must sell to are obliged to pay the same for their goods,
whether they buy them from you or some other jobber in some other
city, how is that other jobber given any advantage over you in the
freight rate?

Mr. HUNDLEY: The retailer will buy his goods cheaper, sir, the
more competition you can furnish him. If there are four dry goods
houses working a state, that state is going to pay a pretty good price
for their goods. If there are ten working it, the retailer will buy
his goods cheaper and sell them cheaper.

1938 Commissioner CLARK: I presume that is a phase of human
nature that enters into all this commercial business, but how
can that be corrected by a readjustment of freight rates? We want
to know what the effect of this change which you ask for would be.
We want to find out how and in what way this is doing injustice to
you and how and in what way it can be straightened out without
possibly doing more injustice to others. Now, if you can tell us
just how this prayer, if granted, will affect your business, and how
it will do justice to you and not do any injustice to anybody else,
we would like to hear your views on that point.

Mr. HUNDLEY: It is my belief that if we are put on an equality or
granted the freight rates that we ask, that we shall be able to serve
the merchants and in that way serve the people west of the Missouri
river better than we are serving them today. I believe the result will
be cheaper merchandise for them and we can enlarge our business
and carry better stocks, and can give them better assortments, and
build up better markets for the merchants to go to.

Here is a small merchant and here is a big one; the big one
1939 may be able to go to New York and buy his goods, if he handles
enough of them; the little man across the street wants
to be taken care of just as well; he cannot go to New York as he
does not buy enough goods there but if we can furnish him a market
in Omaha, St. Joe, or Kansas City, that can be built up to a point
where we can carry the stock at a proper price, we are serving him
better and his customers better than we can do today.

Commissioner CLARK: If this prayer of yours should be granted,
I take it that that would, as you believe, extend this sphere in which
you work and give you an advantage in the selling of goods in the

territory which you now occupy as compared with your competitors at St. Paul and Minneapolis.

Mr. HUNDLEY: We are not asking for any advantage, at least, that was not my idea when I went into the case. We do not want lower rates than anybody; we do not want an advantage. We want to be put on an equality.

Commissioner CLARK: I do not think I intimated in my question that you were seeking any advantage. I suggested that as I understand it, you feel that, granting these rates will extend the 1940 sphere in which you do business, or will permit you to sell more successfully in that territory in competition with St. Paul and Minneapolis jobbers?

Mr. HUNDLEY: Yes, sir, that is true; and in that way we feel that we will benefit the country that we do business in.

Commissioner CLARK: Now, do you know anything in this whole rate adjustment, or if there is not, will the change which you now ask for, inject into this whole rate adjustment, a situation by which the St. Paul and Minneapolis jobbers, and the Chicago jobbers can enter the territory in which you now have practically full sway where you say the St. Paul and Minneapolis people do not go? In other words, if it is proper to make a readjustment which permits you to go into South Dakota and territory more directly contributory to St. Paul and on an equality with the St. Paul jobbers, should it not in the same way permit the St. Paul jobbers to come into the territory directly tributary to St. Joe?

Mr. HUNDLEY: I don't just get the trend of your question.
1941 Commissioner CLARK: Should the general scheme of rate adjustment recognize natural advantages of commercial centers, and recognize that a commercial center has a practical right to an advantage in a reasonable radius, or should the rate adjustment be made on the theory of universal competition in all markets and in all territories of all commercial centers?

Mr. HUNDLEY: I think that would be impossible, to adjust it in that way. My idea of this rate adjustment that we ask for is based on the service that the railroads give us. I do not see why we should pay 32 cents more for exactly the same thing that another community gets for that much less.

Mr. ELLIS: I understood you to say, Mr. Hundley, that the adjustment that you ask for would enable you to extend your territory beyond the points you sell to now?

Mr. HUNDLEY: I think it would, sir.

Mr. ELLIS: Do you handle caps, hats?

Mr. HUNDLEY: No, sir.

Mr. ELLIS: Do you handle calico gingham?

Mr. HUNDLEY: Yes.

1942 Mr. ELLIS: How many pieces of calico gingham to a case?

Mr. HUNDLEY: Forty-five to fifty.

Mr. ELLIS: Assume a fifty piece case which laid down in St. Paul on the present rates, would cost \$130.00; is that a reasonable price for a case of gingham?

Mr. HUNDLEY: Well, that would be as good a price as any to figure on.

Mr. ELLIS: If it cost \$130.00, laid down in St. Paul, and the weight was 75 pounds, it would cost \$131.12 laid down in St. Joe?

Mr. HUNDLEY: Yes, sir.

Mr. ELLIS: On the \$1.47 rate?

Mr. HUNDLEY: Yes, sir.

Mr. ELLIS: That would be about two cents on the piece, roughly speaking. The unit of your sale is case lots?

Mr. HUNDLEY: No.

Mr. ELLIS: You sell by the piece, do you not?

Mr. HUNDLEY: Yes.

Mr. ELLIS: How far beyond your present territory would a change of two cents a piece carry it?

1943 Mr. HUNDLEY: We do not base our prices on our business in that way.

Mr. ELLIS: Then, how would the difference of two cents extend your rate, if you do not—

Mr. HUNDLEY: It might not make any difference at all, if this adjustment was made, on the price of a piece of calico—

Mr. ELLIS: I am asking how it would extend your territory.

Mr. HUNDLEY: It might make a difference of 5 per cent on an underwear line or hosiery line.

Mr. ELLIS: We will see about underwear. Take 24 down suits of summer underwear; that is a fair case, is it not?

Mr. HUNDLEY: Yes, sir.

Mr. ELLIS: Weighing about two hundred pounds?

Mr. HUNDLEY: With the case, about two hundred.

Mr. ELLIS: Your freight would be on two hundred pounds?

Mr. HUNDLEY: Yes, sir.

Mr. ELLIS: We will assume at St. Paul that the freight—the value of that would be about \$150.00: is that a fair value?

1944 Mr. HUNDLEY: Yes, sir; that is a high value.

Mr. ELLIS: What?

Mr. HUNDLEY: Well, that is all right; good enough to figure on.

Mr. ELLIS: Yes, for the purposes of comparison.

Mr. HUNDLEY: Yes.

Mr. ELLIS: If it costs \$150.00 laid down at St. Paul, it would cost \$150.04 laid down at St. Joe?

Mr. HUNDLEY: Yes.

Mr. ELLIS: How much would 64 cents on 24 dozen suits extend your territory?

Mr. HUNDLEY: It might have just this effect, sir, on that garment. Instead of our deciding, on account of the freight we had, to get \$2.35 a dozen for it, we might decide we could sell it for \$2.12½ a dozen. That is the way it would extend our territory.

Mr. ELLIS: You would make a reduction of 12½ cents on a dozen suits?

Mr. HUNDLEY: Yes. In figuring our prices we take each department and figure their freights about so much. Now, there is a limit to what we can pay for an item to sell for \$2.00 a dozen. Another limit on that which we sell for \$2.12½. This item of freight

1945 might come in so as to make a difference of five or ten per cent on some important lines; it might not affect another line at all.

Mr. ELLIS: I understand you to lay down this proposition to the Commission, that on 24 dozen suits, if you get a reduction of 64 cents in freight you would make a reduction of \$5.00 in price?

Mr. HUNDLEY: We might on that particular basis.

Mr. ELLIS: And you would encounter a reduction of \$3.00 in price on a 64 cent reduction in freight?

Mr. HUNDLEY: As long as you are speaking of underwear, I can give you, if you care to have it, in a general way, the handling of that line of goods. It is a very large line with any jobbing house. There is what we call the fleece underwear, that is the kind of goods that are worn by the workingman; it is sold by us at an average price of maybe \$4.00 a dozen. The freight on that figure to, say, about 25 cents per dozen. The goods weigh 14 pounds to the dozen and are packed in a case weighing practically 100 pounds, 32 dozen to a case. The goods costs us \$3.50 a dozen; we pay 25 cents freight to the Missouri river, and sell them from four to \$4.12½, 1946 practically no profit, five to seven and one-half per cent profit.

Now, when we go into Idaho we might meet this man from Minneapolis; it only costs him 15 cents a dozen to freight it. There is a difference there of about 10 cents a dozen between what those goods cost him and what they cost us. He can go into a retailer and sell them to him for \$3.75. He does not make much on it, only 10 cents a dozen, but that will swing that whole underwear bill nine times out of ten.

Mr. ELLIS: But if you make a reduction of \$3.00 based on a reduction of 64 cents in freight, can you contend that the freight has anything to do with the competition?

Mr. HUNDLEY: Yes, I think it has.

Mr. ELLIS: Now, you say that the St. Paul jobbers owns his goods at St. Paul ten cents a dozen cheaper than you do?

Mr. HUNDLEY: Yes, talking of fleece underwear, now.

Mr. ELLIS: What?

Mr. HUNDLEY: Speaking of fleece underwear, he does.

Mr. ELLIS: What will fleece underwear weigh a case?

Mr. HUNDLEY: The standard fleece underwear weighs four- 1947 teen pounds to a dozen, packed 32 dozen in a case.

Mr. ELLIS: Thirteen pounds to the dozen and 32 dozen to the case?

Mr. HUNDLEY: Yes, sir; that is the standard packing; they have 24 dozen cases and 36 dozen cases; 32 is standard.

Mr. ELLIS: Two hundred and fifty pounds to the case?

Mr. HUNDLEY: You add in the case, do you? The weight of the case probably is 100 pounds.

Mr. ELLIS: Well, say 500 pounds for the case, 500 pounds altogether.

Mr. HUNDLEY: Something like that.

Mr. ELLIS: That would be \$1.60 difference in freight on 32 dozen.

Mr. HUNDLEY: Yes.

Mr. ELLIS: That would be five cents a dozen, would it not, instead of seven cents a dozen?

Mr. HUNDLEY: That is the way you have figured it, yes, it would, but——

Mr. ELLIS: Is not the figuring correct?

Mr. HUNDLEY: The principle would be the same, whether 1948 it was five cents or ten cents.

Mr. ELLIS: I understand, but it is not ten, it is five, is it not?

Mr. HUNDLEY: The principle would be the same.

Mr. ELLIS: Then if you can make a reduction of \$3.00 in your price on the strength of a 64 cent reduction in freight, is there not a pretty big leeway of profit somewhere in your business?

Mr. HUNDLEY: You are taking a specific item now. We would not do that with every number of underwear in the line, by any means.

Mr. ELLIS: Well, do you sell flannels?

Mr. HUNDLEY: Yes, sir.

Mr. ELLIS: How many pieces of flannel to a case?

Mr. HUNDLEY: Well, cotton or wool?

Mr. ELLIS: What?

Mr. HUNDLEY: Wool or cotton? I suppose you mean cotton?

Mr. ELLIS: Cotton, I suppose. My memorandum shows thirty-five pieces to a case. Is that a fair case?

Mr. HUNDLEY: Yes.

Mr. ELLIS: I show a weight of 400 pounds.

1949 Mr. HUNDLEY: Yes.

Mr. ELLIS: On thirty-five pieces of flannel the difference would be, assuming the valuation at St. Paul of \$102.00, your value would be \$103.28, that is \$1.28 on thirty-five pieces. That is one of the highest items there in the list. How far would that extend your territory?

Mr. HUNDLEY: The price on any one item would not extend the territory; it would be the fact that we owned our goods so much cheaper that we would feel that we could go into another territory——

Mr. ELLIS: Then when you got your chain all together, it would be stronger than any of the links?

Mr. HUNDLEY: Yes, sir; that is the idea, yes, sir.

Mr. ELLIS: That is all.

Mr. BARLOW: You believe that the cost of transportation does affect values, does it not?

Mr. HUNDLEY: Why it makes values.

Mr. BARLOW: Yes.

Mr. HUNDLEY: It makes the cost of the goods.

Mr. BARLOW: You do a large business in the city of St. Joe, do you not?

1950 Mr. HUNDLEY: We do some business there, yes, sir.

Mr. BARLOW: Are you in competition with St. Paul and Minneapolis in the city of St. Joe?

Mr. HUNDLEY: I have never heard of the dry goods houses down there, no, sir.

Mr. BARLOW: Then your competition is in the shipping of goods

into St. Joe and re-distributing to points west of St. Joe in competition with St. Paul, Minneapolis and other cities?

Mr. HUNDLEY: It is when we get out into the northwest where we are in competition with St. Paul and Minneapolis.

Mr. BARLOW: Do I understand that your theory of rates is that you can ship goods say from the eastern seaboard territory to St. Joe and then reship them out to a common point with St. Paul, distributing at a common point with St. Paul at the same through freight rate as St. Paul and Minneapolis enjoy?

Mr. HUNDLEY: No, I am not talking about through freight rates.

Mr. BARLOW: No, I mean in and out.

Mr. HUNDLEY: I am talking about what it costs to get a 1951 certain amount of goods into St. Paul and what it costs to get them into St. Joe.

Mr. BARLOW: But what I have reference to is a shipment of goods from New York into St. Joe and then reshipping, say to Helena *vs.* a shipment of goods from New York into St. Paul and then the shipment to Helena; do you want the two rates to equalize?

Mr. HUNDLEY: I think they ought to.

Mr. BARLOW: You think that is the fair way of making rates, so that in natural territories the rates would equalize the competition of various cities in and out?

Mr. HUNDLEY: I think we ought to land our goods on the Missouri river as cheap as Minneapolis can land them there.

Mr. BARLOW: Suppose you did, and the rate from St. Joe to Helena was twice as much as it was from St. Paul to Helena, would you meet it?

Mr. HUNDLEY: I do not get that.

(Question repeated.)

Mr. BARLOW: Would you not then have a great handicap in distributing at Helena?

1952 Mr. HUNDLEY: We would either have to equalize that rate with the merchant, or stay out.

Mr. BARLOW: Then it is after all the ability to ship from New York to St. Joe and reship to Helena at the same rate that the merchant at St. Paul can ship to St. Paul and reship to Helena, is it not?

Mr. HUNDLEY: I believe that that is the final working out of the question.

Mr. BARLOW: Now, if you enjoy that, then you have no objection and you think other cities ought to enjoy it, similarly situated?

Mr. HUNDLEY: It would not be my disposition to object to what any other town got, so we did not get the worst of it. If Denver sought a readjustment of rates and they could show a good reason for it, they would never get any complaint from me about obtaining those rates.

Mr. BARLOW: But if you could ship from New York to St. Joe and reship to Helena and St. Paul could also ship from New York to St. Paul and reship to Helena, at very much less rate than Chicago could ship from New York to Chicago and reship to Helena, or St. Louis could, then those two cities would be at a disadvantage, would

be at a disadvantage, would they not?

1953 Mr. HUNDLEY: Yes, sir.

Mr. HOLDEN: What was it you said about your rate adjustment at Deadwood, and Lead?

Mr. HOLDEN: I said we felt the St. Paul competition in that territory very much.

Mr. HOLDEN: How do you feel it?

Mr. HUNDLEY: On account of their owning their goods cheaper than we do.

Mr. HOLDEN: What is your rate adjustment from St. Paul into Deadwood?

Mr. HUNDLEY: I am not talking about distribution, but about the ability of the St. Paul house to go in there and quote lower prices than we do.

Mr. HOLDEN: Do you know what it costs you to ship your goods to Deadwood as compared with what it costs St. Paul?

Mr. HUNDLEY: No, I do not.

Mr. HOLDEN: Is it not a fact that the St. Paul man ships into Deadwood at a 60 cents higher rate than you do?

1954 Mr. HUNDLEY: I could not answer that.

Mr. LYNDE: It is fifty cents.

Mr. HOLDEN: Well, fifty cents.

Commissioner HARLAN: Fifty cents higher?

Mr. HOLDEN: Yes, if the St. Paul man ships into Deadwood, fifty cents higher than the St. Joe man does, then do you say with that adjustment against St. Paul that the St. Paul man competes successfully with you at Deadwood?

Mr. HUNDLEY: Is that the old tariff rate, or it is a recent rate?

Mr. HOLDEN: The old tariff rate was sixty cents, and I understand it is fifty cents now.

Mr. BUTLER: The difference in favor of Omaha is sixty cents and St. Joe if fifty cents.

Mr. HOLDEN: Do you mean to say that with that rate adjustment you do not compete with St. Paul in Deadwood?

Mr. HUNDLEY: I say St. Paul can go into Deadwood and quote lower prices on goods than we do, and if you——

Mr. HOLDEN: Do you lay that to the——

Mr. HUNDLEY: And if the merchant in Deadwood says I can land them from St. Joe fifty cents cheaper, the St. Paul man is likely to say, "all right, I will equalize the freight," and we have found them doing that. They have the advantage in, they can equalize it; they have got something to do it with.

1955 Mr. HOLDEN: Then the difference from \$.32 of the hundred pounds movement in favor of St. Paul permits the St. Paul man to overcome the disadvantage against him of fifty cents in getting goods into Deadwood?

Mr. HUNDLEY: He only does so, where he has to, he does not put it on every bill that he sends out, that they are going to this freight allowance, but he does with this man because he stands him up in the corner and he says, "your goods are cheaper, but the freight rates are higher," and so the St. Paul man will equalize the freight. The

next man perhaps is not posted so well about it, and he does not say anything, and they have the advantage over him.

Mr. HOLDEN: So the St. Paul jobber makes it a practice to stand all he can, and if he can get out of it, he does?

Mr. HUNDLEY: He has got something to fall back on in the rate.

Mr. HOLDEN: You say you are binding St. Paul jobbers 1956 down in Nebraska?

Mr. HUNDLEY: Yes.

Mr. HOLDEN: Do you know what the relative disadvantage they have is as against you?

Mr. HUNDLEY: No.

Mr. HUNDLEY: Have you any idea about how large a disadvantage they are at? Take Sioux City. Sioux City gets the Missouri River rate, does it not?

Mr. HUNDLEY: They do not go in there.

Mr. HOLDEN: Take Hastings, Nebraska, how can the St. Paul man get in there? You say they are in northern Nebraska?

Mr. HUNDLEY: He would have a higher rate in there.

Mr. HOLDEN: How much?

Mr. HUNDLEY: I don't know the figures.

Mr. HOLDEN: Do you consider it is more than the \$.32?

Mr. HUNDLEY: It very probably would be.

Mr. HOLDEN: And nevertheless the St. Paul man is competing with you in northern Nebraska on that unfavorable basis?

Mr. HUNDLEY: Yes, sir.

Mr. BUTLER: Mr. Hundley, do you know of any territory in which you do business east of the Missouri River in which St. Paul and Minneapolis have an advantage over you, as far as freight is concerned that Chicago does not also have an advantage over you, at least to the same extent or greater?

Mr. HUNDLEY: No, sir. If you get east of the Missouri River, St. Paul and Minneapolis—or at least speaking for our house, we do not run into them very much, because we do not get far enough up into Iowa to run into them. Omaha, I guess, has a pretty severe time with them. We all meet Chicago competition, and we meet it every place we do business.

Mr. BUTLER: Do you know of any territory east of the Missouri River in which Omaha does a jobbing business where St. Paul has an advantage in the freight rates over it that Chicago has not at least the same or a greater advantage?

Mr. HUNDLEY: I could not answer as to the question of rates.

Mr. BUTLER: I am speaking of rates. That is the only purpose of this investigation.

1958 Mr. HUNDLEY: I could not answer that.

Mr. BUTLER: Do you know of any territory in which you do business anywhere east or west of the Missouri River where St. Paul has an advantage over you that Chicago has not also an advantage over you in the freight rates to the retail merchants?

Mr. HUNDLEY: Yes, sir.

Mr. BUTLER: Where?

Mr. HUNDLEY: Take the question of Idaho, our rate into Idaho

and the St. Paul rate into Idaho to common points, I believe, is the same rate; the Chicago rate into Idaho common points would not be the same as ours.

Mr. BUTLER: I know, but Chicago gets it in cheaper than you do some seventy cents?

Mr. HUNDLEY: Yes, and it gets it in cheaper than St. Paul does.

Mr. BUTLER: Now, the Black Hills, you are not aware that all of the Missouri River points complaining here have an advantage over St. Paul and Minneapolis into all of the Black Hills points, Lead Rapid City and Deadwood?

Mr. HUNDLEY: I knew that St. Paul had a r-u-d about way of getting in there, they have been at some disadvantage in the 1959 distribution of their rates for that reason.

Mr. BUTLER: The Northwestern extension from here makes it quite a direct way, you know, now?

Mr. HUNDLEY: But our competition there now is going to be very much more severe than it has been, for that reason.

Mr. BUTLER: I did not get that.

Mr. HUNDLEY: Our competition from up there is going to be very much more severe now for that reason, because they have a direct line into the Hills.

Mr. BUTLER: The rates have not been changed?

Mr. HUNDLEY: No, but they have a direct distributing line, they have a bad way of getting in there.

Commissioner HARLAN: If you have the rates from St. Paul to Deadwood and from St. Joseph, I would like to know what they are?

Mr. BUTLER: The Twin Cities to Rapid City or Deadwood, did you say?

Commissioner HARLAN: Yes.

Mr. BUTLER: From the Twin Cities to Deadwood is 639.4 miles.

1960 The rate is \$1.69. 639.4 is the mileage. The Omaha distance is 597 miles and the rate is \$1.29, making a difference on first class of sixty cents in favor of Omaha. Now, in favor of St. Joseph it is fifty cents, and the mileage is greater by 47 miles by St. Joseph than it is from St. Paul, and to Kansas City the difference is 40 cents in favor of Kansas City and the mileage is 67 miles greater.

Mr. BUTLER: Do you know of the fact that a large amount of the dry goods sold by the Twin City jobbers is moved to Duluth by the way of the Great Lakes?

Mr. HUNDLEY: No, I am not familiar with the way of routing those goods.

Mr. BUTLER: Is it not a fact that as far as competition is controlled by rate making, the aggregate rate from the factory to the retailers must be taken into account?

Mr. HUNDLEY: It should be taken into account as—

Mr. BUTLER: Well, is it not the only thing to take into account as far as rate rates are concerned?

1961 Mr. HUNDLEY: The freight that a man pays on a bill of goods is part of the cost and he should take it into account.

Mr. BUTLER: Of course some poor business men do not take wages or insurance, or anything else into account.

Mr. HUNDLEY: No.

Commissioner HARLAN: Mr. Hundley, did you explain why you were not attempting to do business in Western Washington and Oregon?

Mr. HUNDLEY: No, I did not. Our reason is that we began years ago to go into the northwest, and we have developed it as best we could from one thing to another, and we have had to fight our way through every county, pretty near.

Commissioner HARLAN: You simply have not reached that territory?

Mr. HUNDLEY: No.

Mr. WHITE: I believe you testified that you meet St. Paul and Minneapolis in the northern section of the territory you cover?

Mr. HUNDLEY: Yes.

Mr. WHITE: Just what territory do you find there competition most keen?

1962 Mr. HUNDLEY: Idaho, eastern Oregon and eastern Washington, and recently in the Black Hills.

Mr. WHITE: Do you know what the through rates are from the Atlantic Seaboard to Lead by way of the Missouri River Crossings?

Mr. HUNDLEY: No, I should not attempt to quote figures. I have, of course looked these things up at different times, but it is impossible for me to keep the figures in my mind.

Mr. WHITE: Do you know that it is alleged in your complaint that the short line business from the seaboard to St. Joseph is 1382 miles?

Mr. HUNDLEY: I don't remember the figures, that are in the complaint.

Mr. WHITE: You don't know whether the distance from St. Joseph to Deadwood is 686.9 miles?

Mr. HUNDLEY: I don't know that to be a fact, no, sir.

Mr. WHITE: Then you would not know whether the distance through by way of St. Joseph from the seaboard to Deadwood was 2068.9 miles?

1963 Mr. HUNDLEY: No, sir.

Mr. WHITE: It is alleged in your complaint that the short line distance from the seaboard to the Twin Cities is 1332 miles.

Mr. HUNDLEY: I presume it is correct, if it is in the petition.

Mr. WHITE: Do you know whether the distance from the Twin Cities to Deadwood is 639.4 miles?

Mr. HUNDLEY: No, I do not know.

Mr. WHITE: Or 1971.4 miles through by way of the Twin Cities.

Mr. HUNDLEY: No, I don't know what the Twin Cities' mileage is.

Mr. WHITE: You don't know then whether or not the distance by way of St. Joseph is 97½ miles farther than by way of the Twin Cities?

Mr. HUNDLEY: No, I don't know that.

Mr. WHITE: Do you know whether or not St. Joseph has a differential on first class business of fifty cents a hundred pounds?

Mr. HUNDLEY: I only know what has been told me here.

1964 I have not looked it up recently.

Mr. WHITE: You don't know whether the through first-class rate from the seaboard by way of St. Joseph to Deadwood is \$3.04?

Mr. HUNDLEY: No, I would be unable to tell you what the rate was.

Mr. WHITE: You don't know whether the rate from the seaboard to Deadwood by way of the Twin Cities is \$2.86?

Mr. HUNDLEY: No, I don't know that.

Mr. WHITE: If it is a fact, there would be a differential in your favor by way of St. Joseph of \$.18, would there not?

Mr. HUNDLEY: You can take those points on any territory where one market has an advantage over the other, and you can pick out lots of them where the opposite is the same.

Mr. WHITE: I believe it is alleged in your complaint that the distances from the Atlantic seaboard to St. Joseph and Kansas City are substantially the distances from the seaboard to St. Paul and Minneapolis, is it not?

1965 Mr. HUNDLEY: Yes, sir, that is practically so.

Mr. WHITE: Do you know that the distance from the Twin Cities to Deadwood is 639.4 miles, while the distance from St. Joseph to Deadwood is 868.9 miles.

Mr. HUNDLEY: I only have the figures as they were read here. I have not substantiated them.

1966 Mr. WHITE: You are familiar with the conditions at Lead and Rapid City also?

Mr. HUNDLEY: Only in a general way, speaking of the Black Hills we consider that a spot where what applies to one city will about apply to another.

Mr. WHITE: I believe you stated you had difficulty in meeting competition of the Twin Cities in the Black Hills territory.

Mr. HUNDLEY: We are; in what kind of sales did you say?

Mr. WHITE: What?

Mr. HUNDLEY: You say we have difficulty in meeting competition in what kind of sales?

Mr. WHITE: In the Black Hills territory.

Mr. HUNDLEY: In our general sales?

Mr. WHITE: Yes. Do you know whether or not the first-class rate from the seaboard to Rapid City by way of St. Joseph is \$2.77?

Mr. HUNDLEY: I could not answer that without looking it up.

Mr. WHITE: Do you know whether or not the first-class rate from the seaboard to Rapid City by way the Twin Cities is \$2.97?

Mr. HUNDLEY: I could not answer that without looking it up.

Mr. WHITE: You could not say whether you had a differential on first-class of 15 cents?

Mr. HUNDLEY: Not without looking it up, I could not tell you.

Mr. WHITE: You, of course, compete with the Twin Cities at Lead, don't you?

Mr. HUNDLEY: There in that whole country down there.

Mr. WHITE: You are pretty well satisfied with your rates from St. Joseph to that territory?

Mr. HUNDLEY: Do you mean our distributing rates?

Mr. WHITE: Your distributing rates; yes, sir.

Mr. HUNDLEY: I don't know that we have ever taken any special exception to them.

Mr. WHITE: Do you know that in the case of Lead the distance from the Twin Cities is 645 miles and the first-class rate is \$1.89, as your distance is 665.9 miles, and your first-class rate is \$1.30, thereby giving you a differential of 50 cents?

Mr. HUNDLEY: I only know it from your having stated 1968 the figures.

Commissioner CLARK: Do you meet in any part of the territory you work competition from commercial centers east of the Mississippi River, or on the Mississippi River aside from St. Louis?

Mr. HUNDLEY: East of the Mississippi River?

Commissioner CLARK: Do you get any competition from Memphis?

Mr. HUNDLEY: Yes, sir; we do, in Indian Territory and Oklahoma. Through southern Iowa, we get competition from Dubuque and through our territories we have eastern competition.

(Witness excused.)

1969 GEORGE H. CROSBY, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. HOLDEN: You are the General Traffic Manager of the Chicago, Burlington & Quincy Railway?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: How long have you been connected with the freight department of that company?

Mr. CROSBY: Something like thirty years.

Mr. HOLDEN: Have you had occasion to look into the extent to which freight of the classes referred to in this complaint move on the great lakes to and from St. Paul and Minneapolis in trunk line territory as well as from other eastern territory?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Can you turn to any figures which you have and give us a statement in tonnage for two or two recent years?

1970 Mr. CROSBY: I have here a statement of the tonnage to St. Paul and Minneapolis for the year 1905, showing the movement, lake and rail, and also the movement from the Trunk Line and central freight territory. It shows for that year, for example, the first class tonnage, that is the tonnage of first class freight for lake lines was 12,463 tons, or 27% of the total movement. Second class, 2,369 tons, or 20.6% of the total movement. That is the official classification rule 25, 15% less than second class, which would be on cotton piece goods, 6,733 tons, or 52%. Third class freight, 5,696 tons, or 21%.

Official classification rules 26, or 20% less than third class, 985 tons, or 38%. Fourth class, 8,370 tons, or 32%. Fifth class, 21,741 tons, or 33%. Sixth class, 3,560 tons, or 26%.

In the way of commodities, apples, 4,120 tons, or 36%. Canned goods, 7,591 tons, or 60%. Cement, 6,338 tons or 26%. Iron and steel, 53,722 tons, or 53%. Paper, building printing, wrapping, 8,403 tons or 40%. Salt, 4,415 tons, or 40%. Stoves and heating apparatus, 6,473 tons, or 30%. Sugar, 28,705 tons, or 84%.
 1971 Tin plate, 1,922 tons, or 51%. A total, including some items, I have not mentioned, a lot of miscellaneous items of 196,796 tons, or 33%.

Mr. HOLDEN: I understand that is the tonnage moving to St. Paul and Minneapolis.

Mr. CROSBY: Yes, sir.

Commissioner CLARK: These percentages, Mr. Crosby, are the percentages of the total movements from the trunk line territory?

Mr. CROSBY: Yes, sir, and what was received there by lake and rail from whatever source it came. I have here the figures for 1906 also, if you desire them.

Mr. HOLDEN: I wish you would give those figures also.

Mr. CROSBY: First class, 11,740 tons, or 30%. Second class, 2,835 tons, or 23%. Official classification rule 25, 15% less than second class 5,451 tons or 60%. Third class, 4,685 tons, or 20%. Official classification rule 26, 20% less than third class, 1,076 tons, or 40%. Fourth class, 8,503 tons, or 30%. Fifth class, 21,859 tons, or 28%. Sixth class, 4,296 tons, or 50%. Apples, 4,624 tons, or 48%. Canned goods, 9,226 tons or 52%. Cement, 5,987 tons, or 16%. Iron and steel, 59,714 tons, or 54%. Paper, building, printing and
 1972 wrapping, 6,553 tons, or 25%. Sale, 3,858 tons, or 30%.

Stoves and heating apparatus, 5,959 tons, or 52%. Sugar, 28,554 tons, or 81%. Tin plate, 2,243 tons, or 54%. A total, including some other miscellaneous items which I have not named of 202,850 tons, or 28.3%.

Mr. HOLDEN: That also represents the tonnage moving to St. Paul via lake and rail?

Mr. CROSBY: Yes.

Mr. HOLDEN: Territory you named?

Mr. CROSBY: Yes.

Mr. HOLDEN: Now, Mr. Crosby, from the standpoint of a traffic man, operating an all rail line, I wish you would state whether the percentages of the total tonnage moving to St. Paul are of sufficient moment to amount to anything in an actual way as to competition between the lake and rail rates?

Mr. CROSBY: I would so regard it, yes, sir.

Mr. HOLDEN: What is the fact in the administration of traffic on an all rail line, is there or is there not active competition via the rail route to St. Paul and Minneapolis?

Mr. CROSBY: Well, these figures indicate in 1905 that one-third of the tonnage moved there was moved by water. That would
 1973 be quite active competition.

Mr. HOLDEN: Now, if that be true, what do you say as to what claim St. Paul has to any benefit whatever that may result from lake and water competition with the all rail rate?

Mr. CROSBY: Well, the water competition is in a position to fix the basis of rates.

We would undertake to adjust our rates so as to meet that competition.

Mr. HOLDEN: Taking the position, then, of St. Paul and Minneapolis, as compared to the Missouri River cities, Omaha, St. Joseph and Kansas City, what effect does this large amount of tonnage moving by lake to St. Paul and Minneapolis have as to the relative positions of those two communities?

Mr. CROSBY: It is bound to fix the all rail rate. You will see by the items I have mentioned here that the carriers on the lake lines are not confined to a particular class of commodities. They take perishable freight and they take fragile freight like stoves. There is one item I did not read, that indicates the general character of their business. Take the item of agricultural implements for 1906; there were 4,793 tons shipped lake and rail, or 24% of the total tonnage. The fact of their carrying 30%, for example, of first class, indicates the character of service.

Mr. HOLDEN: Does it indicate on the business moving from the seaboard to St. Paul, that St. Paul is in any better position than the Missouri River cities that have brought this complaint?

Mr. CROSBY: Yes.

Mr. HOLDEN: And that is because of its proximity to the great lakes, is it not?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: And does that influence of the water competition have any effect on the cities of Omaha, St. Louis and Kansas City, such as it does on St. Paul and Minneapolis?

Mr. CROSBY: No.

Mr. HOLDEN: Do the Missouri River Cities have any such favorable position with regard to their rates from seaboard territory in the way of water competition such as St. Paul and Minneapolis have?

Mr. CROSBY: I think not.

Mr. HOLDEN: From that point of view, as a traffic man, we have a line running to St. Paul and Minneapolis, just as we have the Missouri River points: do you consider that the Missouri River cities have the same right to the same rate that St. Paul have in view of this water competition?

Mr. CROSBY: Not under those conditions, no, sir.

Mr. HOLDEN: Now, what is the trans-continental rate on goods of this kind, three dollars is it not?

Mr. CROSBY: Three dollars is the first class rate.

Mr. HOLDEN: What makes that rate?

Mr. CROSBY: Ocean competition, water competition.

Mr. HOLDEN: What, for instance, I am trying to get a somewhat similar situation, is the rate from eastern seaboard points to Salt Lake City? Is it greater or less than three dollars?

Mr. CROSBY: The rate to St. Lake City from the Atlantic seaboard is higher than it is to the Pacific Coast.

Mr. HOLDEN: You might find that rate while you are 1976 looking for it.

Mr. CROSBY: I thought I had the figures here. The first class rate all rail from New York to Salt Lake City is \$3.52.

Mr. HOLDEN: \$3.52?

Mr. CROSBY: Yes.

Mr. HOLDEN: Now, then the result of that is that Salt Lake City, being remote from the coast does not get the benefit of the ocean competition which the coast points get. Is that an analogous situation in your judgment to the position of St. Paul and Minneapolis as against these Missouri River points?

Mr. CROSBY: Well, the Salt Lake City rates have got to be adjusted from the eastern territory to meet the Pacific Coast conditions. For example, you could not exact an all rail rate from New York to Salt — City lower than could be made from New York to San Francisco or Sacramento and back, and you have also got to adjust your rate in relation to the Pacific Coast cities of San Francisco, for instance, as a market. San Francisco is a market that is open to the world, and is a distributing center, a jobbing town, 1977 distributes back to Salt Lake City.

Mr. HOLDEN: I was simply wanting to show a similar case where the effect of the water competition gave a more favorable rate than to other points not having the same relation to water competition. Possibly that is not as good an illustration as I could have taken.

Now, Mr. Crosby, can you give us some information as to the relative amount of tonnage that moves from Chicago to St. Paul and Minneapolis over the Burlington line as compared with the tonnage from the Missouri River points in question?

Mr. CROSBY: Well, the density of our traffic on the St. Paul line is greater than it is on the Missouri River Lines, almost two to one.

Mr. HOLDEN: Almost two to one?

Mr. CROSBY: Yes.

Mr. HOLDEN: What is the nature of the haul from Chicago to St. Paul?

Mr. CROSBY: Well, we strike the Mississippi River at Savannah. It is a water level from there practically to St. Paul. 1978

Mr. HOLDEN: And the tonnage is how much, two to one, did you say?

Mr. CROSBY: Almost two to one.

Mr. HOLDEN: Two to one on the St. Paul business?

Mr. CROSBY: Yes.

Mr. HOLDEN: Have you any figures that you could refer to — make that statement more clear?

Mr. CROSBY: I thought I had a statement here — gave that information. I think I have, if I can find it in these papers. In some accountable way, the statement that covers that seems to have been slipped out of this bundle.

Mr. HOLDEN: Well, we will probably have time to get that after the lunch hour. We will go on and take up some other point.

What do you say as to the tons per train hauled towards St. Paul

as compared with the trains going down through the Missouri River country?

Mr. CROSBY: It is a great deal heavier.

Mr. HOLDEN: What was the answer?

(The last statement of Mr. Crosby was read by the stenographer.)

1979 Mr. HOLDEN: Now, Mr. Crosby, it is already in evidence here that the Mississippi River has been a breaking point, to break from the east for a great many years. That is equally true of the Missouri River, is it not?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: What briefly has been the history of the taking of those two rivers as a basing point?

Mr. CROSBY: In building the first railroads that were laid in the country they stopped at the Mississippi River, and other interests built west from there. And the same thing is true as to the Missouri River and the towns on the Mississippi River, as well as the towns on the Missouri River — were started as a result of river navigation.

Mr. HOLDEN: And the transportation, whether as they originally were by river navigation, or whether as the railroads built west from the Mississippi River to the Missouri River,—the transportation rates all ended at the Missouri River.

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: That is the historical development of the transportation conditions between those two rivers?

1980 Mr. CROSBY: They were fixed then by water competition, the railroads had to meet water competition.

Mr. HOLDEN: Boat lines came up by the Mississippi River, making their rates to these points, and the railroads met that condition in the early days.

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Well, now, will you give in your way your opinion as to what the result would be, first in the matter of revenue to carriers, and next in other ways, if this complaint should be sustained and the rate put in that is being asked, of \$1.10 from the seaboard to the Missouri River. Take up the matter of revenue first.

Mr. CROSBY: Taking the tonnage as handled to the Missouri River points, that is Omaha south to Kansas City, for example by the railroads reaching from the Mississippi River to the Missouri River points, Omaha to Kansas City inclusive, the reduction asked for in round figures, based on the 1906 tonnage would amount to four million and a half of dollars. The reduction asked for on first class, for example is \$7.40 a ton, a reduction in the rate from \$1.47 to \$1.10, \$.37 a hundred or \$7.40 a ton. That reduction would amount to \$842,000.

Commissioner HARLAN: On what tonnage?

Mr. CROSBY: On first class alone.

Mr. HOLDEN: What was that tonnage?

Mr. CROSBY: 113,914 tons.

1982 Commissioner CLARK: That is on all the lines?

Mr. CROSBY: Yes, sir; on first class. Now the statement

was made that the C. B. & Q. total reduction under this proposition would be about \$75,000, by Mr. McVann. The loss to the C. B. & Q. line on first and second class freight would amount to \$77,000, without reference to the other classes of freight, based on the tonnage that they handled in 1903. Take this reduction on the first class freight to the Missouri river, and the reduction amounts to \$233,000.

Mr. HOLDEN: Give the exact figures.

Mr. CROSBY: \$275,008.60 on first class freight from the Atlantic seaboard on the haul to Missouri river. That you understand does not include the business going beyond the Missouri river or into Kansas or into territory intermediate to the Missouri river.

Mr. HOLDEN: Now, will you just state, if this reduction is made on Missouri river points, what in your judgment would necessarily follow as to the territory on both sides of the Missouri river?

Mr. CROSBY: Of course, a like reduction would be made to all the territory west, and it would be a greater reduction than this, 1983 if the principle asked for here was carried out.

Commissioner CLARK: Now, Mr. Crosby, just what do you mean by saying there would be a like reduction to all the territory west? Would it necessarily affect the Colorado common points rates?

Mr. CROSBY: Yes, sir; your Colorado common points rates today are made on the combination of the Missouri river. If you take \$7.40 off the rate on first class from New York to Kansas city, or the Missouri river, you take \$7.40 off the Denver rate at the same time.

Commissioner CLARK: Would it affect the rate from the seaboard to Spokane?

Mr. CROSBY: Not necessarily, no, sir, because—well it would reduce the rate to Spokane for example, because the Spokane rate today is based on \$1.15. Now, the claim is made that all we want is equality, and the complaint is against the rate of \$1.15 to St. Paul. To equalize that they ask a rate of \$1.10 to the Missouri river, a greater distance, and that, if granted, would make the rates—would make a readjustment necessary through the St. Paul gateway.

Commissioner CLARK: Now, if this change were made 1984 would it affect the rate to the Idaho common points?

Mr. CROSBY: Yes, sir; they are made in the same way as the Colorado combination on Missouri river.

Commissioner CLARK: How about the Indian and Oklahoma territory rates?

Mr. CROSBY: I think those rates would be reduced on account of the relation of the rates. That is, you could not grade out of those low rates that would be produced in Indian Territory and Idaho, on the present adjustment of rates in Oklahoma and Indian Territory.

Commissioner HARLAN: How far west are the rates based on the Missouri river?

Mr. CROSBY: Practically all territory west of the Missouri river except that within a distance of fifty or seventy-five miles of the Missouri river and north of the main line of the Kansas and Texas Railway. There is certain territory in Kansas, for example, that is

based on the percentage of the combination on Missouri river. Take Wichita, the rate from St. Louis to Wichita is 95 per cent of the rate from St. Louis to Kansas City and Kansas City to Wichita. Now, as a fair example of the rate, conditions if it is proper to make a rate to Kansas City of \$1.10 based on the mileage 1985 proposition, under the application of that same principle the rate to Wichita would make the rate \$1.29 to Wichita. I believe the rate today from Kansas City to Wichita is 66 cents, or something of that sort. I do not think our Kansas City friends would be satisfied to pay 66 cents to Wichita with a rate of \$1.20 from New York to Wichita. This combination would make the rate from New York to Denver \$1.00, and the rate from Kansas City to Denver \$1.25. I do not believe that our Kansas City friends and other Missouri river points would be willing to pay \$1.25 to Denver as against \$1.00 from New York to Denver. I do not believe it would be fair.

Mr. HOLDEN: If it were to be so considered, it would result in a lowering of the local rates?

Mr. CROSBY: The local rates would have to be reduced.

Commissioner CLARK: What would be the effect upon the Mississippi river points, such as Davenport, Dubuque and so on?

Mr. CROSBY: Those rates would have to come down. With 1986 an 87 cent rate from New York to St. Louis, and \$1.10 rate

New York to Omaha, I do not believe the other towns on the Mississippi river would consider that 87 cents would be a fair rate to them. It would call for a reduction of the rate from Chicago. Chicago would be 80 cents as against \$1.10 from New York.

Mr. HOLDEN: Is there any way of estimating what the total loss of revenue to the carriers would be in the event of these readjustments being made, that you say will have to be made? Is there any way to get at any figures as to what it would all represent?

Mr. CROSBY: It is simply impossible to figure that out. We have no tonnage that would give us an idea. In the first place you cannot tell how far reaching this thing would be. But I think from the examples I have given here, you can see how broadcast the change would be.

Mr. HOLDEN: On the Missouri river points, on the seaboard business it is four millions and a half of dollars?

Mr. CROSBY: Yes, sir; and this same reduction on other tonnage would amount to another million dollars.

1986½ Mr. HOLDEN: And that has no reference to the intermediate reductions which must be made to the Missouri river, and the reductions from the Missouri river west, except as the typical case that you have given is concerned?

Mr. CROSBY: No, sir.

Mr. HOLDEN: In your opinion, would it be upwards of at least five millions and a half of dollars?

Mr. CROSBY: Yes, I think it would be greater than that.

Mr. HOLDEN: Now, it has been advocated here that the mileage basis ought to be the basis adopted. What would be the rate if it

were \$1.10 to the Missouri river, what would be the rate to Topeka, Kansas?

Mr. CROSBY: \$1.16.

Mr. HOLDEN: So it would be six cents difference then between Topeka, from New York, and what would be the local rate?

Mr. CROSBY: About 45 cents.

Mr. HOLDEN: So the Kansas City Jobber, if he got his rate, would have to pay the local rate you name, whereas the New York 1987 merchant could ship direct to Topeka at a difference only of six cents?

Mr. CROSBY: Yes.

Mr. HOLDEN: What would the effect of that be in re-locating the jobbing centers?

Mr. CROSBY: It will move it absolutely to the seaboard.

Mr. HOLDEN: And if that were not the result, it would necessarily call for a reduction of the rates from Kansas City and Missouri river points?

Mr. CROSBY: It is bound to follow, yes, sir, and the people that pull the house down would be the first to cry.

1988 Mr. HOLDEN: How long has this relative adjustment of rates between these large cities been in existence?

Mr. CROSBY: Well, practically I would not undertake to say; as far as my knowledge goes, it has practically been the same always.

Mr. HOLDEN: Now, it is your opinion that if the reduction is made to \$1.10 to Missouri River, or any substantial reduction in that basis of rates, that all these other communities would ask for a readjustment to reach the same relative adjustment that they have to-day?

Mr. CROSBY: There is no question about it.

Mr. HOLDEN: So in the ultimate results, the relative position of these different commercial communities would be the same in your opinion, and the net result would be simply that the carriers would have to lose this enormous sum in the amount of their revenue?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Now, what *did* you say about Wichita and Topeka would be true as to all of the cities and towns west of the Missouri River if that mileage basis *were basis* were accepted?

Mr. CROSBY: Yes, sir.

1989 Mr. HOLDEN: I think we had some talk about Hastings, Nebraska being a similar example?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Well, now you have heard a great deal of testimony from witnesses here about the taking of a division of a proportional rate as the measure of a freight charge for a similar distance. I wish you would state what, in your opinion,—what sort of a method that is, whether it is a fair way of arriving at the rates in this complaint?

Mr. CROSBY: I don't think it is. There is just one thing worse on a railroad than low rates, and that is no business, and it don't seem to me that a division of a rate is a fair measurement of arriving at the rate. The question of what that rate is, the factor that should be controlling, is that rate a just or a wrongful rate.

Mr. HOLDEN: Something was said about the proportional of 14.7

from Chicago to the Mississippi River; so far as the Burlington is concerned they get that proportion as a part of a farther haul, do they not?

Mr. CROSBY: Yes, sir.

1990 Mr. HOLDEN: Just explain that so the record will be clear.

Mr. CROSBY: Well, the 87 cent rate to the Mississippi River is a proportional rate published to apply on this Missouri River business, but it redounds to the benefit of the Missouri man; if he did not have it, the only rate he could have for handling this business would be by way of St. Louis.

Mr. HOLDEN: The Chicago route could not participate in it at all?

Mr. CROSBY: No, sir.

Mr. HOLDEN: And the jobber would not have the benefit of those additional lines of transportation?

Mr. CROSBY: No, sir.

Mr. HOLDEN: Now, a good deal has been said about the trans-continental rate in which the lines participate on a certain division, which has been said to be about 33 cents. What have you to say as to that division?

Mr. CROSBY: Well, I don't think that division gives the railroads the revenue that they ought to have. That is, I don't think that the commodities which are handled at that rate pay their fair charge of the transportation, but I do not know of any way in which you can get any more money out of it. It is a question of that or nothing.

Mr. HOLDEN: You participate in that at what you can get from that division or else not do the business at all?

Mr. CROSBY: That is it.

Mr. HOLDEN: Would that be true of all the lines in this vicinity in regard to trans-continental business?

Mr. CROSBY: I think it would be.

Mr. HOLDEN: Then if the road would all decide to draw out because they could not get enough out of the territory, there would be nothing but water transportation to the Pacific coast?

Mr. CROSBY: That is what would be left.

Mr. HOLDEN: What would the result be to the jobber?

Mr. CROSBY: I think it would be to his detriment.

Mr. HOLDEN: He would be back where he was about the time gold was discovered in California?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Do you know any way in which a higher trans-continental rate than \$3 can be obtained?

Mr. CROSBY: No, sir. I think the carriers would be very glad to get it, if these gentlemen can point out the way.

1992 Mr. HOLDEN: Do you know of any way in which you could get a better division than you are getting now on trans-continental business?

Mr. CROSBY: No, I do not.

Mr. HOLDEN: So it is up to the rail carriers to take what they are getting or go without, and in your judgment it is better for the commercial interests of the country to take what they are getting now, rather than to force the traffic back where it was in former years?

Mr. CROSBY: I think so.

Mr. HOLDEN: What would you say as to that division between the Mississippi River and the Missouri River being in any sense a fair measure of transportation of commodities between those points, locally, or as a part of the haul from the seaboard?

Mr. CROSBY: I don't think it is a fair proposition to consider. We do not charge the same rate on all classes of commodities that we handle for the complainants. Our rates vary.

1993 Mr. HOLDEN: Now, Mr. Crosby, Mr. McVann selected in his testimony a number of points, and most of them were just west of the Missouri River, upon which he drew certain deductions, whereby he thinks that Omaha is at a disadvantage to St. Louis, and left the impression, at least the impression in my mind, that the points he picked out were typical of all the territory west of Omaha and the Missouri River cities, and that, therefore, there was a very large amount of tributary territory west of the Missouri River wherein St. Louis had the advantage of the Missouri River jobbing points. Have you had time and taken occasion to examine some of the points he named, and if you have, I wish you would take up two or three of them and state what you found as to the rates adjustment, and what particular reason, if any, there is for the adjustment you found?

Mr. CROSBY: I analyzed his statement that some of the points served by the C. B. Q. Take for example Falls City. He uses as a comparison the rate to Omaha from New York and from St. Louis, and back to Falls City, which is the worst comparison that
1994 could be made. Falls City is an intermediate point between St. Louis and New York and Omaha, and under that fourth section of the Interstate Law, the Omaha rate is applied as a maximum. The nearest jobbing point on the Missouri River to Falls City, is St. Joseph, Missouri. The rate from New York to St. Joseph first-class is \$1.47, from St. Joseph to Falls City, 27 cents, making a through rate of \$1.74. The rate from New York to St. Louis is 87 cents, St. Louis to Falls City, 60 cents, which is the St. Joe and Omaha rate, making \$1.47.

Mr. HOLDEN: Now, that results from the fact, as I understand you, that Falls City happens to be on the Missouri line in hauling from St. Joseph to Omaha.

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Do you consider that a fair statement of the adjustment west of the Missouri River?

Mr. CROSBY: It is not. If this proposed reduction of \$1.10 was made that would be the rate to Falls City as well as to Omaha. That would make the rate from New York to St. Joseph \$1.10, St. Joseph to Falls City, 27 cents, making the through rate \$1.37. New
1995 York to St. Louis, 87 cents, St. Louis to Falls City, 60 cents, making the through rate \$1.47. St. Joe would have the advantage of 10 cents over St. Louis, and also would be at a disadvantage as compared with New York.

Mr. HOLDEN: New York would ship right in to Falls City at \$1.10?

Mr. CROSBY: Yes, sir; at the same price they quote to St. Joseph. Now, the proposition on Chicago is,—Chicago should be considered in this matter; the rate from New York to Chicago is 75 cents, Chicago to Falls City, 80 cents; that would make the rate \$1.55. Chicago would be at a disadvantage of 8 cents as compared with St. Louis, and a disadvantage of 19 cents—well, it would have the advantage over Chicago in that respect.

If the Omaha proposition was used, the rate from New York to Omaha would be \$1.10, and Omaha to Falls City 40 cents,—Falls City, by the way is half way between Kansas City and Omaha, making the combination by Omaha \$1.50.

Another point mentioned Table Rock. The Omaha combination is given there, although the nearest jobbing point is St. Joseph, and the rates from St. Joseph to Table Rock is less than it is from Omaha. Table Rock is a point on the Burlington intermediate as between St. Louis and Lincoln and takes the Lincoln rate.

Mr. HOLDEN: Sixty-five cents from Omaha, isn't it?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: How was that fixed?

Mr. CROSBY: The Lincoln differential is the result of a complaint made to the Interstate Commerce Commission in 1888 by the shippers of Lincoln, as to the adjustment of rates at that point as compared with the Missouri River, resulting in an adjustment on a differential basis over Omaha rates.

Commissioner HARLAN: What is that differential?

Mr. CROSBY: Five cents on first and second class and four cents on third and fourth class,—or, I can't remember distinctly whether it was five cents or four cents on third class. The combination, New York to St. Joseph is \$1.40, and St. Joe to Table Rock, 36 cents, making the through rate \$1.85. New York to St. Louis, 87 cents; St. Louis to Table Rock, 55 cents; making the through rate \$1.52. New York to Chicago, 75 cents, Chicago to Table Rock 85 cents, through rate \$1.60.

Mr. HOLDEN: That Table Rock is intermediate on the Burlington from Chicago as well as from St. Louis.

Mr. CROSBY: It is intermediate between St. Louis and Lincoln. If the \$1.10 scale was used, the rate would be the same at Lincoln, which would naturally be \$1.15, using the differential basis. The combination then would be from New York to St. Joseph \$1.10, St. Joseph to Table Rock 36 cents, making the through rate \$1.46.

Mr. HOLDEN: Now, what about Crete?

Mr. CROSBY: Crete is a point 20 miles west of Lincoln, Nebraska, and you have to grade out of the Lincoln differential rate there, and you cannot get the rate up to the combination local without having too great a jump in the rates, so we grade out of the rate to Lincoln as fast as we can. It results in the rate to that point not being based on the Missouri River combination.

Mr. HOLDEN: That is another instance too where the ordinary conditions do not exist but a peculiar set of circumstances exist.

1998 Mr. CROSBY: Yes. The next point is Ashland, Nebraska, which is an intermediate point between Omaha and Lincoln and takes the Lincoln rate.

Mr. HOLDEN: That would be similar to the example you gave from Table Rock?

Mr. CROSBY: Yes, sir. Dunbar, Nebraska, is another point that is mentioned, and for some peculiar reason the Burlington rate, which is higher than the Missouri Pacific rate, is used. The Missouri Pacific is the direct road. The rate from Omaha to Dunbar is 29 cents, the figure of 40 cents given as the rate from Omaha, being that of the C. B. & Q., which is the long and round-about line. In order to show the actual conditions the Missouri Pacific rate should be used. They are, New York to Omaha, \$1.47; Omaha to Dunbar, Omaha to Dunbar, 29 cents, through rate \$1.76.

Mr. HOLDEN: The 40 cent rate round about to Dunbar, the Omaha jobbers would not use. They would use this 29 cent rate over the Missouri Pacific which is the direct line.

Mr. CROSBY: Yes, sir. I don't think they would be willing to pay us 40 cents for handling this business, when they could ship it direct over the Missouri Pacific for 29 cents.

1999 Mr. HOLDEN: Cameron Junction was named in Missouri. Tell us about that.

Mr. CROSBY: That is between Kansas City and St. Joseph. It is nearer St. Joseph by 20 miles than it is to Kansas City, and the rate is less from St. Joe than from Kansas City, although the Kansas City rate was the basis used in the illustration.

Mr. HOLDEN: That is intermediate then, between St. Louis and St. Joe.

Mr. CROSBY: Yes. Amazonia is another point used by them where the combination was made on the Kansas City rate, which is the farthest away point. Amazonia is 9 miles away from St. Joseph, and would naturally trade in St. Joe.

Mr. HOLDEN: What reason was there why they should use the Kansas City rate when Amazonia is only 9 miles out of St. Joseph?

Mr. CROSBY: It made the worst showing, I suppose, looked like a greater discrimination.

2000 Mr. HOLDEN: Is there any actual business done that you know of on the basis of the figures there which are submitted.

Mr. CROSBY: I do not believe Kansas City would go to Amazonia to do much business in competition with St. Joe.

2001 Mr. HOLDEN: Amazonia is just nine miles from St. Joseph?

Mr. CROSBY: Yes, and 72 miles from Kansas City. It is only nine miles from St. Joe.

Mr. HOLDEN: What is the rail adjustment of rates?

Mr. CROSBY: The adjustment of rates there on the present tariff is New York to St. Joseph, \$1.47, St. Joseph to Amazonia 10 cents, making the through rate \$1.57. New York to St. Louis 87 cents, St. Louis to Amazonia 60 cents, through rate \$1.47. If the \$1.10 scale were adopted at Omaha and St. Joseph, the Amazona rate would not be higher than the Omaha rate, so the rate from New York to Amazonia would be \$1.10.

Mr. HOLDEN: Mr. McVann took Corning, also.

Mr. CROSBY: Corning is another point which is an intermediate point between St. Joseph and Omaha, and is another case where the Kansas City rate was used instead of the St. Joseph rate, which is the nearest point. The tariff on New York to St. Joe is \$1.47, St. Joseph to Corning 26 cents, through rate \$1.75. Corning I should say is intermediate between St. Louis and Omaha. As I stated in the previous case, if that rate was made \$1.10, Corning would take the same rate from New York.

Mr. HOLDEN: In their illustration Corning took the \$1.47 rate.

Mr. CROSBY: Yes. The same illustration can be made of Salem, Nebraska. That is an intermediate point between St. Louis and Lincoln.

Mr. HOLDEN: Tecumseh, Nebraska is another illustration?

Mr. CROSBY: B Yes, it figures out the same way, it takes the Lincoln rate.

Mr. HOLDEN: Now, how about Sidney, Iowa?

Mr. CROSBY: Sidney Iowa is a point in southwestern Iowa about 60 miles from Omaha and therefore involves a back haul and doubling the tariffs. If the \$1.10 scale was adopted to the Missouri river it would apply to Sidney. There is another thing to be considered in connection with those rates, and that is that all the freight handled by the jobbers is not first class. Take in the case of heavy goods like iron and canned goods and sugar, they are handled by the Missouri river jobber on the fifth class rate. That is, they are shipped in in carloads and out in less than carloads, which takes fourth class out. Take this case of Sidney, for example, taking a shipment of canned goods and sugar from New York to Omaha, and reshipping in less than carload lots to Sidney, the fifth class rate New York to Omaha is 57 cents, and from Omaha to Sidney is 10.6 cents, making the through rate 67.6. If the shipment was made direct from New York to Sidney, Iowa, the rate would be 68 cents, that is the fourth class rate from New York to Sidney.

Commissioner CLARK: That is L. C. L.?

Mr. CROSBY: Yes, sir. Of course the New York jobber, if he were shipping a retail dealer in Sidney, would ship in less than carloads. Now, Clarinda, Iowa, is the same thing, that is, it is another case of doubling back on the rate again, of shipping to the Missouri river and shipping back again.

Fremont, Nebraska, is another point that is used as an illustration. Fremont takes the Lincoln rates; that is intermediate with the Union Pacific, and the Elkhorn road, in reaching Lincoln, and as I said, on first class there is a difference of five cents over the Missouri river.

2004 Sioux City, Iowa is a Missouri river point and takes Missouri river rates. I do not believe it could be expected to make the scale at Sioux City higher than any other Missouri river point. It is a jobbing town, claimed to be, made a pretty good showing here in the line of jobbing houses. I do not believe the other towns on the Missouri river could expect to supply them. Some of the points that have not been named, for instance, for example, where a difference does not exist, can be best illustrated by

taking Hastings, Nebraska, and what is true of the Nebraska rates is true of probably 85 per cent and over of the territory west of the Missouri river, and east of California. The rate to Hastings, Nebraska through St. Louis is made up of the rates to the Missouri river and the rates from the Missouri river to Hastings.

For example, the first class rate from St. Louis to Omaha is 60 cents, from Omaha to Hastings is 51 cents, making the through rate from St. Louis to Hastings \$1.11. The rate from New York to St. Louis is 87 cents, and therefore the rate from New York to Hastings is \$1.98.

Mr. HOLDEN: That would be the rate via St. Louis?

Mr. CROSBY: Via St. Louis, but it is the rate via Omaha and it is the rate via St. Joseph. The basis of rates that Chicago 2004½ would have to pay would be New York to Chicago, 75 cents, Chicago — Omaha 80 cents, Omaha to Hastings 51 cents, through rate \$2.00.

Mr. HOLDEN: That would put Chicago at a disadvantage?

Mr. CROSBY: Yes, sir. Now take the shipment of fifth class goods, into the Missouri, and fourth class goods out. The fifth class rate, St. Louis to Omaha is 22 cents, the fourth class Omaha to Hastings is 30 cents, making the through rate by the carload shipments in Omaha and less than carload out, 52 cents from the Missouri river. If that is shipped as fourth class freight, and that is what the St. Louis jobber would do, he would pay 57 cents, an advantage of five cents a hundred-weight, to the Missouri river man.

There is also an advantage to the Missouri river man in the distribution of dry goods. A retail merchant gets miscellaneous assortments of dry goods from wholesale houses in St. Louis and Chicago, which include cotton piece goods and other articles. All go out as first class rate from the Mississippi river and Chicago, whereas, when it is distributed by the Missouri river house, he ships his cotton piece goods in at the commodity rate, which in the case of the rate from the Missouri river places is 35 cents as against the first 2005 class rate of 60 cents, so on such shipments made from the

Missouri river, which are classified as first class, and the similar shipments made from St. Louis, classified as first class, the Missouri river man has an advantage of 25 cents per hundred, the difference between the first class rate of 60 cents and the commodity rate of 35 cents on cotton piece goods, which may be in that passage.

Now, mention has been made of Deadwood. The first class rate from St. Paul to Deadwood is \$1.86; New York to St. Paul \$1.15, making the through rate \$3.01.

2006 The rate from New York to Omaha is \$1.47, Omaha to Deadwood, \$1.29, through rate \$3.76. The distance from New York to Omaha by way of St. Paul is less than it is by way of Omaha or any other Missouri River point, so that on a mileage basis, the rate via St. Paul should be less, if mileage is the proper basis.

Mr. HOLDEN: Now, I understood you to say that you took Hastings there and stated the basis of rates, and that that is true as to 85% or upwards of 90% of the territory west of the Missouri River that these jobbing houses do business in, clear up to California?

Mr. CROSBY: Well, on our railroad and in our territory, what I mean when I say our territory is, I mean the territory west of the Missouri River where the rates are on the combination of locals, with the exception of the territory south of the main line of the Kansas City & Texas Railroad, running west from Kansas City, except points near the Missouri River. On our railroad the combination of locals prevails at Exeter, Nebraska, and west, with the exception of some territory in Montana that has been referred to here, but in that territory our rates from the Missouri River are the same as they are from St. Paul.

Mr. HOLDEN: What is the relative distance, speaking about distance, from St. Paul to common points out in Idaho?

Mr. CROSBY: It is less.

Mr. HOLDEN: It is upwards of say 200 miles less from St. Paul to Lewiston, Idaho, than Kansas City, is it not? I think you have some figures there.

Mr. CROSBY: From Kansas City the difference would be about 200 miles in round figures. So far as Montana common points are concerned, handled by the Burlington, the distance from Omaha and St. Paul is about the same. That would not be true of southern Missouri River points; it would not be true of business handled by the Union Pacific, as they are the long lines, notwithstanding some statements made to the contrary here.

Mr. HOLDEN: Have you got Idaho points there?

Mr. CROSBY: Lewiston, Idaho, the distance from St. Paul to Lewiston is 1,658 miles; from Kansas City to Lewiston, 1,816 miles.

Mr. HOLDEN: That is relatively true in many of those points?

Mr. CROSBY: Yes, sir.

2008 Mr. HOLDEN: At which there is the same rate out from Missouri River that St. Paul has?

Mr. CROSBY: Yes, sir. The fact of the matter is that the rate per ton per mile from New York to Lewiston, via St. Paul and Kansas City is the same.

Mr. HOLDEN: Then if I understand it, the adjustment of rates on out-bound freight from Missouri River points is as favorable for the Omaha and St. Joseph and Kansas City merchants as it is for the St. Paul man, although it is a considerably farther distance, and into a territory that is on a direct line west of St. Paul?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Well, what would you say as to that territory up there being more properly St. Paul and Minneapolis territory for jobbing purposes than Omaha and Kansas City?

Mr. CROSBY: Why, from a glance at the map it seems as though that territory is more tributary to it than to the Missouri River.

Mr. HOLDEN: Nevertheless they have the same adjustment of rates up there that St. Paul has.

2009 Mr. CROSBY: They have the same adjustment out, yes, sir.

Mr. HOLDEN: As you come south from that direct line from St. Paul out into that territory, is there any such adjustment that puts

St. Paul into what might be called Omaha territory and Kansas City territory?

Mr. CROSBY: No, sir.

Mr. HOLDEN: In the way that Omaha and Kansas City are put up into that territory?

Mr. CROSBY: No, sir.

Mr. HOLDEN: You spoke about some commodity rates from the Missouri River. Are there or are there not a number of commodity rates which govern commodities handled by these jobbers?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: For instance, there seem to be some drug houses in this complaint. Is there a commodity rate on drugs?

Mr. CROSBY: There is a carload rate of \$.45 a hundred from the Mississippi and the Missouri River.

Commissioner CLARK: What class do they take to the Mississippi River?

Mr. CROSBY: I don't know whether there is a commodity 2010 rate there or not, Mr. Commissioner.

Mr. HOLDEN: There has been some testimony here about some of the lines east of Chicago and those west, as to tonnage earning revenue per ton per mile, and I show you some figures. Taking the Pennsylvania Line, for instance, as that was the one mentioned I believe today by Mr. McVann, and the Burlington, I wish you would state what the comparative figures are in that regard, and what deductions you make—what deductions you draw from them?

Mr. CROSBY: Poor's Manual for 1907 shows that the Pennsylvania Railroad handled 18,478,371,275 tons of freight one mile.

Mr. HOLDEN: What did the C. B. & Q. handle?

Mr. CROSBY: The C. B. & Q. handled 6,347,902,891 tons.

Mr. HOLDEN: Have you anything in the way of earnings per mile there?

Mr. CROSBY: The earnings of the Pennsylvania Railroad per mile are shown as \$27,735; the C. B. & Q. as \$5,751.

2011 Mr. HOLDEN: About one-fourth of the earnings per mile on the Burlington as earned per mile on the Pennsylvania?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Now, with that relative relationship of tons carried per mile, and earnings per mile, what is the relation between the per ton per mile rate?

Mr. CROSBY: The Pennsylvania earnings per ton per mile are shown as 5.95 mills. The C. B. & Q. as 8.10.

Mr. HOLDEN: Not anywhere near twice as much?

Mr. CROSBY: No, sir.

Mr. HOLDEN: And yet the Pennsylvania earns five times per mile what the Burlington does?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Now, from that showing, would you say as Mr. McVann and others have said here, that the operating east of Chicago and west of Chicago to the Missouri River, represented approximately the same relative standing?

Mr. CROSBY: I should say not.

2012 Mr. HOLDEN: Mr. Crosby, it appears that there has been a boat line established from St. Louis to Kansas City within the last year and a half or two years. Have you had occasion to examine into that matter, and in the first place can you tell us who the parties are who organized the boat line?

Mr. CROSBY: I understand the boat line is organized by the jobbers of Kansas City, some of whom are the complainants in this case.

Mr. HOLDEN: Name some of them who are complainants in this case?

Mr. CROSBY: Burnham, Hanna, Munger Dry Goods Company, Swofford Brothers.

Mr. HOLDEN: That is the firm that Mr. Davison represented who testified the other day?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Swofford Brothers. Who else?

Mr. CROSBY: Richards & Conover Hardware Company, Smith McCord, Townsend Dry Goods Company, Jones Brothers Dry Goods Company, Ellet-Kendall Shoe Company.

Mr. HOLDEN: I think that is enough. Those people are complainants here and also the organizers of this boat line?

Mr. CROSBY: Yes.

2013 Mr. HOLDEN: They run two or three boats, do they not from Kansas City to St. Louis and back again?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: And on this same class of freight which is the subject matter of this complaint?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Have you a copy of their tariff rates?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: What is their first class rate, St. Louis to Kansas City?

Mr. CROSBY: Forty cents.

Mr. HOLDEN: And they are asking you to establish a \$.23 all rail rate from Kansas City to St. Louis?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: I wish you would take their schedule of rates there and give what other points may be of interest there. Do you find, for instance, that they make any difference in their rates to points on the river that have no railroad serving them?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: What do you find?

2014 Mr. CROSBY: They seem to observe the rule of getting all they can.

Mr. HOLDEN: They seem to observe the rule of meeting competition, and when there is no competition, of asking along a different line?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: State one or two examples.

Mr. CROSBY: Take Lexington, Missouri, for example, they advertise a freight rate first-class of \$.19 by boat.

Mr. HOLDEN: From where?

Mr. CROSBY: From Kansas City. They specify in their tariff or add that the rate by rail is \$.29, calling attention to the fact that there is a saving of \$.10. At Bluffton, Missouri, which is a point beyond Lexington, they make a rate of \$.30, and specify that it has no railroad there.

Mr. HOLDEN: Do you know how far it is beyond Lexington?

Mr. CROSBY: No, I do not.

Mr. HOLDEN: But the specification is made that it is not a railroad point and the rate scales up very rapidly?

2015 Mr. CROSBY: Yes, sir.

Mr. HOLDEN: What is the rate from Jefferson City as compared to the St. Louis rate from Kansas City?

Mr. CROSBY: The Jefferson rate is \$.32 by boat, against a \$.40 rate by—against a \$.48 rate by rail.

Mr. HOLDEN: Well, I think there is a statement there in their first advertisement, that there is a blanket rate there from Jefferson City all the way down to St. Louis. The last sheet, I think it is.

Mr. CROSBY: I think not.

Mr. HOLDEN: I may be wrong about that. From Kansas City what is the rate via the boat to Jefferson City and all points east as far as St. Louis?

Mr. CROSBY: The advertisement that they have here makes it forty cents.

Mr. HOLDEN: How far is it about from Jefferson City?

Mr. CROSBY: All points east of Jefferson City, forty cents.

Mr. HOLDEN: How far is that about, Jefferson City is about in the middle of the state, isn't it?

Mr. CROSBY: Yes.

Mr. HOLDEN: So it would be around one hundred miles?

Mr. CROSBY: Yes, sir.

2016 Commissioner CLARK: Jefferson City is just midway, isn't it between Kansas City and St. Louis?

Mr. CROSBY: I think so. I haven't got the exact distance in my mind.

Mr. HOLDEN: If your Honors please, it is half past twelve, and I would like to suspend now, if agreeable to your Honors. I am not quite through with my examination.

Commissioner CLARK: All right. I would like to ask, however, for information, what the prospects are of finishing this afternoon.

Mr. HOLDEN: I think this is the only witness I would like to produce.

Commissioner CLARK: Have you any more, Mr. Peirce?

Mr. PEIRCE: No, sir.

Commissioner CLARK: Have you, Mr. Lynde?

Mr. LYNDE: I have one more witness, a very short one.

Commissioner CLARK: We will take a recess then until two o'clock.

Recess until two o'clock P. M. of the same day.

2017

AFTER RECESS.

GEORGE I. STURGIS, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. HOLDEN: Mr. Sturgis, you are the General Auditor of the Chicago, Burlington & Quincy, and have been in that department of that road for a number of years?

Mr. STURGIS: Yes, sir, since 1888.

Mr. HOLDEN: In complainants' Exhibit No. 6 some figures have been submitted. Among others it is stated, for what purpose I am not clear, but it is stated that the Chicago, Burlington & Quincy have a surplus of \$41,658,434.74; the impression on my mind being that the purpose of that showing is to show that there is that amount of so-called profits or *ideal* surplus, or whatever it may be, I do not know, in the Chicago, Burlington & Quincy treasury. I wish you would explain just briefly what, if any, surplus the Chicago, Burlington & Quincy has, and what has been done with it, and where it is, and what that figure amounts to.

2018 Commissioner HARLAN: Has the complainant offered any testimony on that?

Mr. HOLDEN: Yes, it is their exhibit six, and Mr. McVann gave some testimony, offering that as an exhibit; the last page of Exhibit 6, I think.

Commissioner HARLAN: I had not observed that in the exhibit when the exhibit was put in evidence.

Mr. HOLDEN: Proceed.

Mr. STURGIS: That figure which you have seen, and which I recall as being in round figures \$41,000,000 is presumably the income account balance for the year 1903, June 30, 1903. That means that that is the profit resulting from operation from the time the road commenced up to June 30, 1903.

Mr. HOLDEN: About when did the road commence?

Mr. STURGIS: In 1856, I believe, about fifty years, therefore.

Mr. HOLDEN: In what form is that sum of money, or where is it, or what has been done with it?

Mr. STURGIS: That sum of money is practically all in the road and in the property that it necessarily has to carry such as
2019 materials and supplies. I have some figures that refer to June 30, 1907, this last year, but I have not the details of the 1903 figures before me. The road and equipment. For equipment up to June 30, 1907, cost \$345,000,000. Against that there were securities outstanding, stock, \$110,000,000, bonds \$168,000,000, making a total of \$278,000,000. That shows that the road and equipment alone cost in excess of the stock and the bonds \$87,000,000 in round figures.

That is, that money instead of being paid to the stockholders in the shape of dividends went back into the road. It is not in the shape of cash. In fact, this last year, June 30, 1907, our figures showed cash on hand about \$6,000,000. At the same time there were unpaid vouchers and pay rolls of about \$7,000,000, so that

there was no surplus cash in there over and above what we actually had to pay out, say, in thirty days.

Mr. HOLDEN: Over what period of time has this surplus account been invested back into the property in the way of extensions and betterments.

2020 Mr. STURGIS: Presumably ever since the start, that is they have gone ahead and built up the property, and the earnings as shown by the surplus, the surplus earnings have gone into that property.

Mr. HOLDEN: And the figures you have up to June 30, 1907, show in round numbers there have been \$67,000,000 invested in the property more than the proceeds of the capital stock and bonded indebtedness.

2021 Mr. STURGIS: I perhaps should explain that in taking the surplus figure at \$41,000,000 a year ago, or \$47,000,000 as it now appears on June 30, 1907, the whole surplus has not been taken; that is, there are other surplus accounts that they did not recognize, whoever made up that old statement.

Mr. HOLDEN: Well, those other surplus accounts—

Mr. STURGIS: They went in the same way, they are part of the surplus.

Mr. HOLDEN: If that surplus, accumulated over fifty years, had been divided among the stockholders in the way of dividends, what would have been necessary to have the property in the same condition it is to-day.

Mr. STURGIS: In that case we would have had to issue new securities in order to obtain the property and bring it up to its present standard, either by buying or building: of course, in a big system like ours we have bought in a number of roads which we did not build, therefore, the cost of that property was what we paid for the securities of the other road. In other cases we actually built the road and built the equipment; but if that had been distributed to the stockholders we would have had to issue other securities to bring the property up to its present position, and, of course, would have had to earn the dividends and interest on the extra capital that had been expended.

Mr. HOLDEN: If it had been all bonds, you would have had \$67,000,000, more outstanding to earn interest on, and if you had issued stock, it would have been \$67,000,000 to earn dividends on.

Mr. STURGIS: Yes, sir.

Mr. HOLDEN: The result is that putting this surplus back into the property, after paying reasonable dividends, the stated expenses of the company were less than they would have been if the other way had been followed, if the surplus had been divided among the stockholders.

Mr. STURGIS: Yes. A good many years the dividend was less than a reasonable dividend. Some years there were no additions to surplus, and I think the lowest was 4 per cent. that we paid, that is, within the last twenty-five years that I am speaking of. Back of that I have not the records.

2023 Mr. HOLDEN: Without assuming to go into detail, to what extent with the use of this surplus as well as other capital has the road been rebuilt in the last twenty-five years, or less? For instance, through Iowa, the main line, what has been the expenditure out there, not in dollars, but what has the nature of the work been out there?

Mr. STURGIS: Well, between the Mississippi and Missouri rivers, through Iowa, the line has been practically *been* rebuilt in the last ten or twelve years. Of course, when the road was first put through Iowa, the country was very sparsely settled, and very poor, and the traffic did not warrant anything but the cheapest kind of a road and line; it was full of curves and grades. In order to eliminate those difficulties, we have had to practically rebuild the road, leaving the old line in many cases several miles away and making a new line entirely.

Mr. HOLDEN: In a great many cases as you travel between the Mississippi and the Missouri rivers towards Omaha, is it not a fact that the old roadbed is in plain sight on both sides of the present line?

2024 Mr. STURGIS: Yes, and away below it, and in some cases above it.

Mr. HOLDEN: The general level of the road has been equalized by cutting out grades, so that in some cases how much is the present level of the road over old roadbed?

Mr. STURGIS: I could not give you any figures to represent the general average; there are very high banks where there were none in the old days, and also very heavy cuts where there were none. The road between Burlington and Pacific Junction has been practically rebuilt.

Mr. HOLDEN: Practically rebuilt?

Mr. STURGIS: Yes.

Mr. HOLDEN: And not on the same right of way in a large percentage of cases?

Mr. STURGIS: No.

Mr. HOLDEN: A lot of new right of way has been acquired.

Mr. STURGIS: Yes.

Mr. HOLDEN: How is it down in Missouri?

2025 Mr. STURGIS: There has not been the same amount of actual relocation of lines across the State, but the old Hannibal & St. Joe, which was a road we bought originally crossing the State of Missouri from Hannibal to Cameron Junction and St. Joe and Kansas City, has been almost entirely rebuilt, almost on the same line, that is comparatively little new right of way purchased. But in our line running in to St. Louis, *in to St. Louis*, while I cannot give the figures, it was an enormous piece of work, some ten years ago, I should say, when we got our independent entrance in to St. Louis. We never have had a line in to St. Louis, but used to get in over the Wabash the best we could.

Cross-examination.

Mr. ATWOOD: In your system of computation what is deducted from the gross earnings before you pass it to surplus account?

Mr. STURGIS: Operating expenses, fixed charges and taxes and dividends.

Mr. ATWOOD: How about the maintenance of way and structures?

Mr. STURGIS: That comes under the operating expense head.

2026 Mr. ATWOOD: What does that mean, the account of maintenance of ways and structures?

Mr. STURGIS: Well, it means maintaining them up to the present standard, practically; that is the broad line on which it is with some latitude to carry it to the general state of efficiency.

Mr. ATWOOD: Doesn't that have reference to the roadbeds, depots, bridges and the like of that?

Mr. STURGIS: Yes, sir.

Mr. ATWOOD: And maintenance of ways and structures does mean that?

Mr. STURGIS: It does mean roadbed and structures, stations and so forth.

Mr. ATWOOD: How much last year, in 1906 was deducted from your gross account before you passed anything to the surplus, which went to the maintenance of ways and structures?

Mr. STURGIS: I could not tell you without having the figures before me.

Mr. ATWOOD: Well, could you approximate it?

Mr. STURGIS: No, I cannot.

Mr. ATWOOD: It is something better than \$10,000,000, is it not?

2027 Mr. STURGIS: I should say so, but I cannot give the figures without the books.

Mr. ATWOOD: And this maintenance account, does it not include if you bettered a grade by a cut or fill, would not that be properly chargeable to maintenance account?

Mr. STURGIS: No, it would not.

Mr. ATWOOD: It would not?

Mr. STURGIS: No.

Mr. ATWOOD: Nor straightening a curve?

Mr. STURGIS: Nor straightening a curve, it would not.

Mr. ATWOOD: And as I understand it, this \$41,000,000 which you have called surplus, is what has passed to that account so denominated after paying the operating expenses, the interest and dividends and everything else?

Mr. STURGIS: Interest and dividends and taxes.

Mr. ATWOOD: That might be considered an expense of maintenance and operation?

Mr. STURGIS: And some rentals to be paid; they are comparatively small now, and thin sinking fund.

Mr. ATWOOD: Then, do I understand that this \$41,000,-
2028 000 has been invested in rebuilding your line outside and beyond maintenance?

Mr. STURGIS: No, not by any means. Part of it has been used in part of the cost of rebuilding; for instance, the new right of

way and where we took and built that line across Iowa, for instance, and abandoned the old line entirely.

Mr. ATWOOD: How many miles were there?

Mr. STURGIS: The distance across is about three hundred miles, roughly.

Mr. ATWOOD: Has it been built entirely out of surplus account?

Mr. STURGIS: No, it was not entirely charged to separate account. Anything that comes under the head of superstructures, that is the rails, ties, buildings and so forth that were on the old line were considered renewed in building the new line, and that went into operating expenses. Where we made new fills, new cuts, and bought new right of way, that went into what we call our cost of road and equipment.

Mr. ATWOOD: Was that taken from the surplus account?

Mr. STURGIS: That was taken from the surplus account.

2029 Mr. ATWOOD: And how much of that surplus of \$41,-
000,00 is is invested in this reconstruction across Iowa?

Mr. STURGIS: I could not tell.

Mr. ATWOOD: Can you approximate it?

Mr. STURGIS: No.

Mr. ATWOOD: Have no idea of it?

Mr. STURGIS: No.

Mr. ATWOOD: Has there been any portion of the surplus account taken to be employed in similar work in Missouri?

Mr. STURGIS: Yes, sir.

Mr. ATWOOD: How much?

Mr. STURGIS: I could not tell you.

Mr. ATWOOD: Approximate it.

Mr. STURGIS: I could not tell you.

Mr. ATWOOD: Cannot tell?

Mr. STURGIS: No. I can tell you, of course, with the books, but I did not come prepared to go on the stand, so I have not them here.

Mr. ATWOOD: Of course, I do not know your state of unpreparedness. I can simply ask the questions. Where else has the
2030 surplus moneys gone except in Missouri and Iowa?

Mr. STURGIS: All through the different States where we have built lines without placing bonds, where we have acquired new lines.

Mr. ATWOOD: Has all the acquisition of new lines been paid for out of the so-called surplus account?

Mr. STURGIS: Not all of them.

Mr. ATWOOD: Has all of the reconstruction been paid for out of the so-called surplus account?

Mr. STURGIS: Not all of them.

Mr. ATWOOD: That is all.

2031 GEORGE H. CROSBY, recalled for further examination, testified as follows:

Mr. HOLDEN: Since the adjournment at noon have you obtained some of the figures on the tonnage on the La Crosse Division, which runs up to St. Paul, and the tonnage of the different lines carrying the Missouri river traffic?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: Just state that.

Mr. CROSBY: For the fiscal year, ending June 30, 1907, our figures show that on the La Crosse Division we handled three million, sixteen thousand, one hundred and sixty-six tons per mile of main track. On the Galesburg Division, which division handles both Omaha, Kansas City and St. Joe freight, moving from Chicago, the figures are 1,029,015 tons; the Aurora Division, which is the division that runs out of Chicago and handles business from Chicago both for Omaha and other Missouri river points, 1,822,244 tons. The Ottumwa Division, which is that portion of the railroad from Burlington to Creston, Iowa, which would handle business for Omaha and Council Bluffs, 1,962,733 tons. Creston Division, that is the line from Creston to Council Bluffs and Pacific Junction, 759,787 tons. The Brookfield Division, that is the line from Clinton to Kansas City and St. Joe, 1,950,031 tons, tons per train mile,——

Mr. HOLDEN: What do you mean by that?

Mr. CROSBY: Tons in a train hauled one mile. La Crosse Division, 835.11; Aurora 460.23; Galesburg 439.06; Ottumwa 516.95; Creston 422.89; Brookfield 333.15;

Mr. HOLDEN: By those figures you mean that over the La Crosse Division the average train hauls 835.11 tons, do you?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: That is, this route that the merchandise goes to St. Paul over?

Mr. CROSBY: Yes.

Mr. HOLDEN: And the other figures you have given show that on the hauling of freight to the Missouri river points, it ranges from 516 tons per train down to 335 tons per train?

Mr. CROSBY: It ranges from 516 to 335, yes, sir.

2033 Mr. HOLDEN: Now the Brookfield Division, you say, is the division on which the business to St. Joe and Kansas City goes from Clinton?

Mr. CROSBY: Yes.

Mr. HOLDEN: Why is that as low as 335?

Mr. CROSBY: Well, that is all the tonnage that was offered for the trains that run there; it is the average hauling.

Mr. HOLDEN: What have you to say as to the nature of the haul there as to grade, as compared with the water grade of the La Crosse Division?

Mr. CROSBY: It is a heavy grade, and harder to operate and more expensive.

Mr. HOLDEN: It is over a different kind of country?

Mr. CROSBY: Yes, sir; going across the Divide, going contrary to

the run of the streams, and when you get up on the La Crosse Division you go with the stream.

Mr. HOLDEN: Now, on the ton per mile on the main line, the La Crosse Division seems to have in some cases three to one as against the other divisions you have mentioned, and in other cases two to one.

Mr. CROSBY: I have four to one, in one case.

Mr. HOLDEN: That is in the Creston Division, it is as high 2034 as four to one, indicating, if I draw the proper deduction, that the tonnage on the St. Paul line is much greater than the lines hauling toward the Missouri river.

Mr. CROSBY: Yes, sir. You will understand that the lines toward the Missouri river have the benefit of all the freights going west and coming from the west, that is, west of the Missouri river.

Commissioner CLARK: Are those figures that you have given the total tonnage hauled over that track?

Mr. CROSBY: They are taken from our statistics; they are supposed to be, yes, sir.

Commissioner CLARK: That is you include Missouri river and Pacific Coast business?

Mr. CROSBY: Yes, sir; everything that moves over the line.

Mr. HOLDEN: Now, turning back for a minute, you made some figures there, or memoranda this noon which you have in your hand there. I would like to have you testify from that.

On page 3 of Exhibit 3, presented by the Complainants, perhaps it will shorten matters if you will just go ahead in your own 2035 way and state what deduction you draw from that exhibit.

Mr. CROSBY: Well, the Complainants say on page 3 of their Exhibit 3, that the New York Central proportion to Chicago—that on that basis the rate from Chicago to the Missouri river, based on the short line distance would be 38½ cents. I cannot figure how this was arrived at. The New York Central proportion to Chicago first class is \$14.46, using the short line distance of 912 miles, would mean a rate of 1.585 cents per mile. Applying this to the short line, 465 miles from Chicago to the Missouri river, they have a rate of 7.21 cents, or using the average distance furnished by the complainants, 472 miles, we have 7.48.

Mr. HOLDEN: Per ton?

Mr. CROSBY: Per ton. If we use the proportion between Chicago and the Mississippi river of 14.7 cents or \$2.94 per ton, and apply the average mileage of 180 miles, we have \$.0153½ per ton per mile, or if we use the short lines, 136 miles, distance from Chicago to East Clinton, we have \$.0216 per ton per mile. Apply this to 455 2036 miles short line, we have \$9.83 cents per ton, or taking the average of 472 miles, we have \$10.20 per ton, or 51 cents per cwt. as first class rate from Chicago to the Missouri River.

Mr. HOLDEN: That is on the basis, as I understand it, of the per ton per mile on which the New York Central proportion of the earnings from Chicago to the Mississippi river would show if applied west of the Mississippi river?

Mr. CROSBY: No, that shows what the rate would be from Chicago,

using the proportion from Chicago to the Mississippi river, taking the New York rate as the basis. That is 14.7 a hundred, or \$2.94 a ton.

Mr. HOLDEN: And taking that method of computation, that would show a rate of 51 cents to the Missouri river?

Mr. CROSBY: Yes, sir.

Mr. HOLDEN: And you have already testified as to the relative density of traffic on that line as compared with lines east of Chicago.

Mr. Crosby, are there a number of so-called differential routes over which the seaboard tonnage moves to the Missouri 2037 river?

Mr. CROSBY: Yes.

Mr. HOLDEN: Will you state what those routes are, and the rates applicable by them?

Mr. CROSBY: I cannot say that I can give the rates accurately. They are canal and lake lines; I believe the differential first class is 20 cents on them; and lake and rail lines, on which the differential is 10 cents, that is the lake and rail rate would be \$1.37, instead of \$1.47; and what is called the sea and rail lines, that is routes from New York by the Old Dominion Line steamers, or by Boston over the Merchants & Miners Line to Norfolk and Newport News, the differential is 10 cents flat. There is the same differential from New York by the Savannah line, by way of Savannah.

Mr. HOLDEN: How about the gulf ports?

Mr. CROSBY: The same differential prevails by the gulf ports.

Mr. HOLDEN: That is via New Orleans and Galveston?

Mr. CROSBY: That is via New Orleans and Galveston.

Mr. HOLDEN: Can you state whether or not any substantial proportion of this tonnage shipped to the Missouri river moves by those lines?

2038 Mr. CROSBY: I think there is a great deal which moves by the Lake lines and also by the sea and rail lines.

Mr. HOLDEN: I think that is all.

Cross-examination:

Mr. ATWOOD: Something was said this morning, Mr. Crosby, about the rivers and the lakes fixing the rates quite a long time ago, as I understood you.

Mr. CROSBY: What we were referring to were the rates——

Mr. ATWOOD: I will make myself plain. That was simply introductory. But as I say, you were speaking of the 87 cent rate to the Mississippi river and said that that was established a long time ago——

Mr. CROSBY: No, we were talking about rates to the Missouri river.

Mr. ATWOOD: How about the 87 cent rate from the Atlantic Seaboard to the Mississippi river having been fixed by water competition or gulf competition?

Mr. CROSBY: I had nothing to do with fixing that rate. I don't know.

Mr. HOLDEN: I do not think that was his answer. His
2039 answer was that the rates were made on the Mississippi river,
and afterwards, as the roads were built, they were fixed to
the Missouri river.

Mr. CROSBY: I said the railroads were built first to the Mississippi
river.

Mr. ATWOOD: Did the water competition there have to do with
fixing the rates, do you know?

Mr. CROSBY: I don't know.

Mr. ATWOOD: Have you any opinion as an expert on that subject?

Mr. CROSBY: I believe there was a time when it did have some-
thing to do with it.

Mr. ATWOOD: How long has the 87 cent rate obtained?

Mr. CROSBY: I think since back some time in the '80's, 1885
or 1886.

Mr. ATWOOD: At the time of the establishing of that rate, did they
recognize water as a factor in fixing the rate?

Mr. CROSBY: I said I had nothing to do with making them. I
don't know.

Mr. ATWOOD: Speaking as an expert, you have made a study of
other things than those which pertain to your own road,
2040 have you not?

Mr. CROSBY: I have not had occasion to study that.

Mr. ATWOOD: Your answer is that you have no information how
that rate was formed?

Mr. CROSBY: No.

Mr. ATWOOD: You are not ready to contradict the proposition that
it was affected by water competition on the Mississippi river?

Mr. CROSBY: There were boat lines on the Ohio and Mississippi
rivers hauling freight from Pittsburg. It may have had some
influence.

Mr. ATWOOD: Speaking in the light of your many years ex-
perience, what is your opinion on that subject?

Mr. CROSBY: I don't know.

Mr. ATWOOD: Would you undertake to say that it was not a
fact that those two lines to which you have just adverted, were not a
material factor in forming the rate from the Atlantic seaboard to
the Mississippi river?

Mr. CROSBY: They would undoubtedly have some influence.

Mr. ATWOOD: You recognize them as a factor which should be
considered in determining what the origin of that rate was,
2041 speaking as an expert—

Mr. CROSBY: There have been times when freight has
been shipped from New York to Pittsburg and down the Ohio and
up the Mississippi.

Mr. ATWOOD: Has it an actual or a potential influence in using
it as a factor?

Mr. CROSBY: We do not try to cross a bridge unless it is there.

Mr. ATWOOD: The fact is that you recognize it as an influence in
the making of that rate, in your opinion as an expert, I am asking
you.

Mr. CROSBY: Undoubtedly it had some influence. As I say, it was there.

Mr. ATWOOD: Do I understand you that the water competition is in no wise there on the Mississippi river today?

Mr. CROSBY: Not to any appreciable extent, I do not think.

Mr. ATWOOD: Is the territory adjacent to the Great Lakes at all influenced by the presence of water competition over the lakes?

Mr. CROSBY: I suppose it is to a greater or a less extent.

2042 Mr. ATWOOD: And that would include Ohio?

Mr. CROSBY: There are undoubtedly rates made from the east to Cleveland that get into the center of Ohio.

Mr. ATWOOD: And the territory generally west of Buffalo and east of Indiana and Illinois lines and north of the Ohio river.

Mr. CROSBY: The rates could be adjusted so that the business would move by the lakes to the ports and be distributed.

Mr. ATWOOD: And that very fact is one of the things which caused water competition to have this influence on all rail rates?

Mr. CROSBY: It has more or less influence.

Mr. ATWOOD: That being so, will you explain why it is that when the 40 cent proportional went into effect on the 17th of May, 1897, for more than two years they continued to charge a 60 cent proportional on goods in this Central Association territory, destined to St. Paul.

Mr. CROSBY: They were trying to see if they could hold their own and maintain that rate. There may be different ideas
2043 about these matters. I might think I could do business at the 60 cent rate against a 30 cent rate on the lakes, and wake up some time and find I could not.

Mr. ATWOOD: Do I understand that it took the managements of the roads interested in that territory two years to discover whether or not they could successfully compete on that rate?

Mr. CROSBY: I don't know that it did.

Mr. ATWOOD: Will you assume for the moment, if you don't know that it did, that it did so, and assume that it is a fact; have you any explanation why for two long years it remained with the 60 cent proportional on goods originating in that territory and 40 cents on goods originating at New York, if the water competition was such a potent factor?

Mr. CROSBY: I don't believe that condition of rates existed.

Mr. ATWOOD: If you can, will you be so good as to assume the accuracy of the hypothesis?

Mr. CROSBY: Well, that is a case of poor judgment.

Mr. ATWOOD: If it was a fact, it would be evidence that at least for two years, the water competition did not produce the
2044 result you seem to think necessary?

Mr. CROSBY: It did not have the desired effect, apparently.

Mr. ATWOOD: Does everybody want the railroad people to reduce the rates?

Mr. CROSBY: No, I mean on the part of the shippers; they are always looking for something better.

Mr. ATWOOD: Something was said in relation to the trans-continental rate, and of course passing over the fact that the road

operated by you does its transcontinental work at a profit, as is claimed in its answer, but speaking as an expert, I will ask you whether or not the whole of that business, taken as an entirety, is in your judgment unprofitable?

Mr. CROSBY: If you mean to ask if I think the trans-continental business pays what it ought to, I say it does not.

(Question repeated.)

Mr. CROSBY: If we had another business, I do not believe it would be profitable.

Mr. ATWOOD: That question is quite permissible of an
2045 answer yes or not, and I would be greatly obliged to have you give it.

Mr. CROSBY: It is impossible to tell, because you cannot segregate that business.

Mr. ATWOOD: I am not asking for a fact, but for your opinion.

Mr. CROSBY: I cannot tell.

Mr. ATWOOD: Whether it is possible or not——

Mr. CROSBY: I cannot segregate that business from any other business.

Mr. ATWOOD: I do not ask you to segregate that business. I asked about the trans-continental business as an entirety, state whether or not you consider it is profitable.

Mr. CROSBY: I cannot put that business on a basis by itself and cannot form an opinion.

Mr. ATWOOD: You cannot take in your mind's eye or cannot conceive of the whole trans-continental business and consider it as such?

Mr. CROSBY: Not to know just exactly——

Mr. ATWOOD: I did not ask for exactitude.

Mr. HOLDEN: I submit the witness ought to have the right to answer his questions. I have not heard one answer of the
2046 witness which he has been allowed to complete.

Commissioner CLARK: Does your question comprehend the entire transactions of trans-continental business of all the railroads engaged therein?

Mr. ATWOOD: Yes, I want his notion about it.

Mr. HOLDEN: I submit, if I may be permitted to make a suggestion, that it is hardly fair to take Mr. Crosby on the eastern and western end of the trans-continental business. How can he possibly know whether it is profitable or unprofitable to haul it up to the Burlington or beyond the end of the Burlington?

Commissioner CLARK: He has asked him as an expert his opinion as to whether or not the trans-continental business taken as an entirety is done at a profit.

Mr. HOLDEN: Mr. Crosby has not taken the attitude of being an expert on trans-continental business. If he wants to ask about the Burlington business, he can ask that, and Mr. Crosby can answer; but it is putting him in an unfair position. He is only here to testify——

Commissioner CLARK: If the witness sees fit to disclaim any knowledge, it is his privilege.

2047 Mr. HOLDEN: I submit it is the privilege of counsel to object.

Commissioner CLARK: The objection will be recorded.

Mr. CROSBY: I don't know that I understand just what it is, now, after all this argument.

(Question repeated.)

Mr. ATWOOD: Is the purpose of my inquiry in your mind?

Mr. CROSBY: I don't know whether you want me to say or whether you expect me to answer as to the entire trans-continental business, whether I think it is profitable business or not?

Mr. ATWOOD: That was just the purpose of that question.

Mr. CROSBY: Some of these railroads that handle this business to maybe a greater extent than we do can tell you more about it. We are only a small factor in the handling of that business. It is a very small item so far as our business goes, and we do not even control the rates or make them. We simply accept what is fixed for us by competing railroads, that in a measure control the rates, and they undoubtedly find the business pays them or otherwise

2048 they would not make those rates.

Mr. ATWOOD: If I infer correctly, and I desire you to correct me if I am wrong, in your judgment, speaking from your observation and other things that are a basis for your opinion, you deem the whole of it profitable?

Mr. CROSBY: The railroads who fix the rates must deem it so, otherwise I do not suppose they would engage in the traffic.

Mr. ATWOOD: You are the rate making power so far as it is fixed in any one individual, in the Burlington System, I understand?

Mr. CROSBY: I have something to say about making the rates.

Mr. ATWOOD: And the question pretty nearly stated the facts, did it not, that so far as any one individual can be, you are the rate making power of the Burlington?

Mr. CROSBY: Well, I suppose that could be said.

Mr. ATWOOD: As you fix your rates, what is the idea you have in mind as to the amount of profit you ought to make, speaking in percentages?

Mr. CROSBY: I would not figure on that. We don't know

2049 what it would cost us to do the business—

Mr. ATWOOD: But you have some idea, I suppose, even when you fix a rate, and certainly have a greater one after it has been in existence for a great many years?

Mr. CROSBY: I do not know of an instance where we have the privilege of fixing the rates; competition controls that. My ideas about rates may not accord with people I am in competition with, but I have to accept their views.

Mr. ATWOOD: But you would not enter into competition and lose money and attempt to recoup against some less fortunate patron of your road, would you?

Mr. CROSBY: I don't know exactly what you are driving at.

Mr. ATWOOD: I ask you if you would enter into competitive business if you were going to lose money.

Mr. CROSBY: I have to know what target you are shooting at, before I know where you will hit.

Mr. ATWOOD: The question is whether you would enter into competitive business, recognizing you were going to lose money by doing it?

2050 Mr. CROSBY: I cannot tell in advance, so I could not know whether we were going to lose or not.

Mr. ATWOOD: Recognizing that you are going to lose money by entering into the competitive business, I ask you if you would undertake to embark in it?

Mr. CROSBY: I would not undertake to spend a dollar and get ninety cents.

Mr. ATWOOD: If you will concede that you would not go into it with the idea of losing money, I suppose you would go into it with the idea of making money.

Mr. CROSBY: Try to.

Mr. ATWOOD: What would be your notion when you undertook to frame a rate, would be the proper percentage of profit for you to make?

Mr. CROSBY: As I said before, I don't know what it is going to cost me to do the business, and I cannot figure in advance.

Mr. ATWOOD: But you have some idea what you ought to make?

Mr. CROSBY: I don't know whether our main business is going to be merchandise, coal or something else. If I could tell
2051 how the business was coming, I do not believe I would stay in the railroad business very long.

Mr. ATWOOD: The question is what idea you have as to how much profit your road should earn for you under these particular tariffs, not what it is actually getting. We recognize you cannot know just what the cost will be, but you must have some idea as to what proportion of profit should come to you.

Mr. CROSBY: We have to be governed by what has been the experience of others and what has gone before.

Mr. ATWOOD: Judging from the experience of others, what is the conclusion which you come to as to what your proper percentage of profit should be?

Mr. CROSBY: If we build a railroad from Hannibal to St. Joe, for example, and we find there is a railroad there which has been doing business at certain prices that do not seem to be making any more for the railroad than they are entitled to and bring in a fair return, we would not undertake to reduce the rates that were there; we would attempt to profit by their experience.

Mr. ATWOOD: Having profited by their experience, what
2052 would be the conclusion you would arrive at as to what you thought a fair profit should be, have you no notion of what a fair profit on that business is?

Mr. CROSBY: If I could tell just exactly what the expense would be—

Mr. ATWOOD: We fully recognize that. Nobody, not even a country merchant knows that, but he knows whether he is going to make

a profit. I am asking you if you are not as well off as the country merchant.

Mr. CROSBY: I think there is very little difference between the principal of doing business on the part of the railroad and the merchant.

Mr. ATWOOD: That being so, and you being as clever as the country merchant, tell us, as he would readily enough if he were asked the question, what percentage of profit you would expect to make.

Mr. CROSBY: You flatter me.

Mr. ATWOOD: I certainly would consider you as clever as the country merchant.

Mr. CROSBY: I do not understand what you are after.

Mr. ATWOOD: I will go over it again. We have agreed that there is no great dissimilarity between the country merchant's
2053 methods and purposes and those of yourself as a railroad representative, and I think you will agree with me that the average country merchant if asked what percentage of profit he expected, would readily give some answer. I now ask you if you have no notion of what profit should be earned in running this business?

Mr. CROSBY: The basis of cost is considered by him in determining his profit, and I have no idea what that cost would be.

Mr. ATWOOD: You have no idea and desire the Commission to understand that you have not any idea of what constitutes a fair profit in railroading, in the light of this enormous experience of yours?

Mr. CROSBY: Not with your method of arriving at it——

Mr. ATWOOD: No matter about my method. Use your own.
(No reply.)

Mr. ATWOOD: All right, let it go. With relation to the length of time, I am not sure whether you followed Mr. Biddle's suggestion in saying that some evidence of the righteousness of the rates lay in
2054 their being long established rates or not. What is your notion about that?

Mr. CROSBY: I was not present when he testified.

Mr. ATWOOD: Well, accept my crude translation of his better language and give us your notion in that regard.

Mr. CROSBY: It would seem as though a rate which has been in effect a number of years, and the country having developed on it, and business moving——

Mr. ATWOOD: With that thought in mind, how does this companion thought strike you, that if it were not for the prevalent notion obtaining some years since that these rates were all wrong, and needed rectification, that there would not have been created an Interstate Commerce Commission?

Mr. CROSBY: That was the result of everybody asking for what was reasonable and others thinking it is not reasonable. You ask for a fair competition with St. Paul, and in another breath for a less rate than St. Paul.

Mr. ATWOOD: Since you show such a desire to volunteer
2055 statements of that character, have you no opinion as to what is a fair profit in a railroad? Since you volunteer, I will give you a chance to answer.

Mr. CROSBY: I did not attempt to answer that question in the last remark I made.

Mr. ATWOOD: Speaking of the tonnage that moved to St. Paul, as I recall the figures in round numbers one-third of which was by water, by lake and rail, 200,000 tons—am I right about the figures?

Mr. CROSBY: Somewhere around there.

Mr. ATWOOD: That would make the total to St. Paul 600,000 tons, in round figures?

Mr. CROSBY: Yes.

Mr. ATWOOD: Is that to and through St. Paul, or only to?

Mr. CROSBY: That is to St. Paul and Minneapolis.

Mr. ATWOOD: And stops there?

Mr. CROSBY: Yes.

Mr. ATWOOD: And breaks and is distributed there?

Mr. CROSBY: It may be consumed there; it may be redistributed.

2056 Mr. ATWOOD: And what is the total of the tonnage that goes through the southwestern gateway by the Missouri River and by that I have reference to Kansas City, St. Joe and St. Louis going south?

Mr. CROSBY: I don't think I gave any figures on that.

Mr. ATWOOD: I do not think you did. I simply asked if you could.

Mr. CROSBY: I think I have some figures which will give some information on that. The tonnage into St. Joe, Atchison, Leavenworth, Kansas City and Junction Points beyond in Kansas, south of what is known as the Beatrice Line, which is the line running from Nebraska City west through Beatrice and down to Superior, Nebraska for the year 1906 was 1,182,288 tons.

Mr. ATWOOD: That is the exact figure. That is to and through.

Mr. CROSBY: In that territory, yes, sir.

Mr. ATWOOD: Now, how about the total tonnage to and through the St. Paul gateway, if you can give it, or an approximation?

Mr. CROSBY: The tonnage to St. Paul and Minneapolis for that year was 1,163,645 tons.

2057 Mr. ATWOOD: And the difference is what?

Mr. CROSBY: Practically 18,000 tons.

Mr. ATWOOD: In favor of which?

Mr. CROSBY: In favor of southwestern Missouri River points, of four towns against two and all the territory west of the river and south of the line that I spoke of.

Commissioner HARLAN: Did that last figure include tonnage which went through the Twin Cities?

Mr. CROSBY: No, sir.

Mr. ATWOOD: You told us a moment ago that 600,000 was the amount in round figures for that which stopped at St. Paul.

Mr. CROSBY: That was on business from the trunk line central traffic territory.

Mr. ATWOOD: What is the total to and through St. Paul and Minneapolis?

Mr. CROSBY: I have not got the through tonnage. I have said that

those figures included St. Paul and Minneapolis, and also the Stillwater tonnage and it does not include the business going to points west like Fargo and Bismarck and Montana points.

2058 Mr. ATWOOD: Does it include that which goes to the coast?

Mr. CROSBY: No, sir.

Mr. ATWOOD: Now, with relation to the adjustment of rates in the eastern part of Nebraska, will you name a point within seventy-five miles of Omaha west in which Omaha is on an equality with Chicago or St. Louis?

Mr. CROSBY: Well, that is an off-hand question, that I cannot answer without looking up the figures.

Mr. ATWOOD: You spoke of the difference of six cents per hundred weight, first-class, between the Atlantic and Missouri River rates and the Atlantic and Mississippi rate as being something anomalous, as I understood you. Is it not a fact that there has only been a five cent difference between Omaha and Lincoln and Omaha and Fremont, Nebraska between the Atlantic seaboard and those three places taken for many years—

Mr. CROSBY: That differential basis of adjustment, yes, sir.

Mr. ATWOOD: Has such a result transpired that because of
2059 this Fremont rate, it has produced a stunt upon the town of Omaha?

Mr. CROSBY: It is the basis of your complaint in which Mr. McVann submitted.

Mr. ATWOOD: Confine yourself to my question. The question is whether or not you know of the presence of that five cent rate beyond Omaha on the through rate to Fremont being destructive to Omaha?

Mr. CROSBY: There has been a good deal of complaint about it. Omaha has complained about it. I do not suppose they made that complaint with the idea they are not hurt.

Mr. ATWOOD: You know the two towns; they are both on your lines.

Mr. CROSBY: Yes, sir.

Mr. ATWOOD: You know them?

Mr. CROSBY: Yes, sir.

Mr. ATWOOD: You know the history in the last two years?

Mr. CROSBY: Yes, sir.

Mr. ATWOOD: Now, I will ask you again if you found the
2060 presence of that five cents difference being destructive to Omaha?

Mr. CROSBY: I do not think it was destructive to Omaha to any great extent.

Mr. ATWOOD: You spoke of Sydney, Iowa and said if the rate suggested or if the \$1.15 rate was established, there would have to be a like rate to Sydney because of the long and short haul, clause, was I right?

Mr. CROSBY: I did not say because of the long and short haul.

Mr. ATWOOD: Well, for any reason?

Mr. CROSBY: I said it would be there because we could not reasonably charge a higher rate to those intermediate points than we could to the Missouri River.

Mr. ATWOOD: It would be commercial conditions purely which would cause the condition you have just spoken of?

Mr. CROSBY: It is a question whether we could do it under the Inter-state law.

Mr. ATWOOD: It is on a branch line, is it not?

Mr. CROSBY: Yes, sir.

Mr. ATWOOD: And the line to Sydney would not be included here in the long haul?

2061 Mr. CROSBY: Not in the long and short haul clause, no.

Mr. ATWOOD: So it would be commercial conditions purely that would dictate it?

Mr. CROSBY: It might not be.

Mr. ATWOOD: Well, what is it?

Mr. CROSBY: The Commission, for example, might decide that a rate to Sydney, leaving out the fourth section of the law would be unreasonable if it was higher than it was to Omaha. That would not be based on commercial reasons, I do not suppose.

Mr. ATWOOD: When you said this morning that it would be necessary to make the same rate to Sydney, you were basing your opinion upon the hypothesis that Sydney might complain and it might take the form of an address to the Commission and the Commission might hear it and decide it ought to be the same.

Mr. CROSBY: No, the basis of the Missouri River rate to Sydney has been there for years. I do not believe we could safely depart from it without getting into trouble.

Mr. ATWOOD: You have in mind, no doubt, a tolerably accurate history of the St. Paul rate?

Mr. CROSBY: I am not particularly acquainted with it—

Mr. ATWOOD: And how, on June 20, 1890, the 40 cent proportional became 50 cents and remained so for two or three years?

Mr. CROSBY: I say I am not particularly acquainted with that. I was not in this part of the country—

Mr. ATWOOD: Now, will you—

Mr. HOLDEN: I submit he should have the right to finish his answers.

Commissioner CLARK: That is correct.

Mr. CROSBY: I want to say that at the time you speak of I had nothing whatever to do with the St. Paul business. I was located on the Missouri river, and it was not part of my duties to look after St. Paul business.

Mr. ATWOOD: And in making your preparation to testify in this case, you have given no attention to the history of the St. Paul rate?

Mr. CROSBY: I have not looked it up especially, no.

2063 Mr. ATWOOD: Do you know whether or not it is a fact that on June 20, 1899, the 40 cent proportional became 50 cents and was continued until January 2, 1901.

Mr. CROSBY: I believe that is the case.

Mr. ATWOOD: And all the time, according to Mr. Martin, the 40 cent proportional established by the Soo line was a factor?

Mr. CROSBY: I think at that time, instead of having a proportional rate west of Chicago, there were probably through rates.

Mr. ATWOOD: Were you present when Mr. Martin testified?

Mr. CROSBY: Yes, sir.

Mr. ATWOOD: I suppose you defer to him in accuracy pertaining to those things?

Mr. CROSBY: He was talking as to the Soo line. I do not think he was giving testimony as to the C. B. & Q. or the Northwestern.

Mr. ATWOOD: Did not the C. B. & Q. follow the Soo line in establishing the same proportional?

Mr. CROSBY: If they wanted to keep hold of the business they undoubtedly did.

2064 Mr. ATWOOD: It is a fact that they did do so. Now, since it is a fact, and so disclosed by the testimony, I ask how you explain, if the water competition is a dominant factor, that there should be a raise from 40 cents to 50 cents in the middle of the season, continuing for two years.

Mr. CROSBY: They may have been feeling about the water competition to see how far it would go and whether it would control the traffic that they had an idea that it would.

Mr. ATWOOD: And that fact and those two years of experience would not suggest to your mind at all, that perhaps water competition was not in actuality such a potent factor as you suggest?

Mr. CROSBY: There were two kinds of competition; we had Soo line competition and water competition, and Mr. Martin told you he made his rate against water competition.

Mr. ATWOOD: Whatever they made them against, they were a 40 cent proportional?

Mr. CROSBY: Yes, sir. It does not necessarily follow, however, that everybody else had to meet his rates. There were water 2065 rates today that we do not meet, or that have been in effect, that we have not met.

Mr. ATWOOD: With relation to the rates east of the Missouri river, in the event that there should be an establishment of the rate of \$1.15, let us for a moment address ourselves to the situation in St. Paul. Do you know how long the 60 cent local obtained prior to the establishment of the 40 cent proportional on Chicago-St. Paul business?

Mr. CROSBY: No, I do not.

Mr. ATWOOD: If it was a fact that barring ten short days the 60 cent had been in existence since 1890, and had been in no wise affected by the presence or the establishing of a 40 cent proportional, would that be to your mind as an expert some evidence of the fact that there would not be such a shaking up following a change in the proportional, as you suggest?

Mr. CROSBY: Well, the testimony I was giving this morning was not in regard to the proportional—

Mr. ATWOOD: If you would be so kind as to address yourself to the questions I ask—

Mr. CROSBY: Your questions are so long I cannot bear them in in mind.

2066 Mr. ATWOOD: The question is this: something has been said with relation to the effect that there would be upon the rates between the two rivers in the event there was establishing of the proposed \$1.15 rate. Now, if I direct your attention to the fact that since 1890 the sixty cent local has obtained between Chicago and St. Paul has not been in any wise affected by the establishment of the forty cent proportional in 1897—is it all plain so far?

Mr. CROSBY: Yes, sir.

Mr. ATWOOD: Would you from that think it fair to draw the inference that perhaps the tremendous volcanic effect would not follow as to these through rates if we did have the establishment of a new proportional to the Missouri River?

Mr. CROSBY: There is not as great a difference between forty and sixty as between twenty-seven and forty-seven.

Mr. ATWOOD: If it is bound to have its effect, why should not there be some effect—

Mr. CROSBY: The principle might be the same, but the difference might not be so large.

Mr. ATWOOD: That would be very true, but don't you think speaking as an expert, that if you find the experience resulting from a change of proportional had no effect whatever upon a local
2067 where there is a 33 1/3% change, that it is fair to infer that there would not be such revolutionary results if you change another proportional a bit more than that?

Mr. CROSBY: It is largely a question of the degree of the change, I think. We would get our local rate from Kansas City to Chicago, for example.

Mr. ATWOOD: Then I would infer from that, if you reduce the rates from forty-seven cents to twenty-seven as they reduced it from sixty to forty, making the west of Chicago proportional reduction the same, there would not be in your judgment any particular effect?

Mr. CROSBY: From forty-seven to twenty-seven?

Mr. ATWOOD: I know, I am taking the whole rate in the one instance, I take the \$1.47 Atlantic seaboard to Missouri River rate, or we can take the western proportion.

Mr. CROSBY: If that change was brought about, we would undoubtedly have complaints from St. Louis, Chicago and other points about their adjustment of rates, claiming the adjustment was unfair.

2068 Mr. ATWOOD: Who from Chicago has complained about the sixty cent local since the establishment of the forty cent proportional to St. Paul?

Mr. CROSBY: Why, the jobbers, the jobbers of Chicago; Mr. Barlow, who represents them, for example, has complained.

Mr. ATWOOD: You do not pay any attention to him, your sixty cent is still going on?

Mr. CROSBY: He has not been able to convince us. It is just like your forty cent rate from Kansas City to St. Louis on the steamboats.

Mr. ATWOOD: By the way, you do not want this Commission to understand that two boats, each of three hundred tons burden and

that ply about six times a year each between St. Louis and Kansas City is a factor which you fear?

Mr. HOLDEN: I submit you ought not to run down our local industries.

Mr. ATWOOD: Please just multiply by six that two, and then I will ask you if you consider it is a serious factor in the transportation problem?

2069 Mr. CROSBY: There has been no question, so far as the opinion of your people is voiced that it was put on for the purpose of breaking down the railroad rate.

Mr. LYNDE: You were asked as to the relative rates to points, if I understand the question correctly, seventy-five miles west of Omaha, and the comparison was between Omaha and Chicago on the one hand, and Omaha and St. Louis on the other. Now, the rate to Omaha from the seaboard is \$1.47, and the rate from Chicago to the seaboard is \$.75, I understand?

Mr. CROSBY: Yes, sir.

Mr. LYNDE: What is the rate from Chicago to the Missouri River?

Mr. CROSBY: Eighty cents.

Mr. LYNDE: That then was \$1.55 by way of Chicago to the Missouri River?

Mr. CROSBY: Yes, sir.

Mr. LYNDE: And both Omaha and Chicago would pay the locals from the Missouri River to the point of final destination?

Mr. CROSBY: Yes, sir.

Mr. LYNDE: In what way then is it possible that Chicago
2070 has an advantage over Omaha in that territory from Chicago, when the disadvantage to it to the Missouri River is eight cents, first class?

Mr. CROSBY: Well, you take a differential point west of the Missouri River, for example—

Mr. LYNDE: I am taking a point that is seventy-five miles west of Omaha, that is *what* the question was put to you, seventy-five miles in the territory west of Omaha.

Mr. CROSBY: I have not got in mind any particular point.

Mr. LYNDE: Take any point on the straight line west of Omaha?

Commissioner CLARK: Columbus was the point.

Mr. CROSBY: Beatrice is the differential point. Crete is seventy-five miles west of Omaha.

Mr. LYNDE: What do you mean by the differential point, five cents from Omaha?

Mr. CROSBY: Yes. Beatrice is not, but Lincoln is.

Mr. LYNDE: Taking that, if Chicago is at a disadvantage of eight cents to begin with up to the Missouri River, how is it possible that Chicago can get into Beatrice at an advantage over Omaha or
2071 Lincoln either, whatever it is.

Mr. CROSBY: The rate from Chicago to Lincoln first class is eighty-five cents.

Mr. LYNDE: That is five cents over the rate to Omaha?

Mr. CROSBY: Yes. While the rate from Omaha is Lincoln, for example, is probably thirty cents.

Mr. LYNDE: That is because of the differential, is it?

Mr. CROSBY: Yes.

Mr. LYNDE: Take a point where the differential does not apply and where Omaha pays the locals to that point, and Chicago pays the locals to that point, then it must be a clear advantage?

Mr. CROSBY: Well, if it does, Chicago is at eight cents a hundred disadvantage. A fair sample of that is the Hastings incident that I gave there.

Mr. LYNDE: Is that true of the greater portion of that territory?

Mr. CROSBY: Yes, sir. I stated that in giving my statement as to Hastings. I said that that condition prevailed probably in 85% or a greater per cent in the territory west of the Missouri River and east of Calif—

2072 Mr. McVANN: May I ask a question along the line of that question?

Commissioner CLARK: Yes.

Mr. McVANN: You were speaking about the equalizing of rates in Nebraska at a point seventy-five miles west of Omaha, do you recall definitely about how far west of Omaha your rates escape from what you call the influence of the Lincoln differential and get together on the sum of the locals from Missouri River points?

Mr. CROSBY: I think Exeter, which is about—

Mr. McVANN: On your main line?

Mr. CROSBY: Yes.

Mr. McVANN: On your Republican Valley Line, how far west do you go before that equalization sets in?

Mr. CROSBY: I suppose just west of Endicott.

Mr. McVANN: Is it not as a matter of fact Superior?

Mr. CROSBY: No.

Mr. McVANN: Or just east of Superior?

Mr. CROSBY: No, I think not.

Mr. McVANN: You don't know then definitely?

Mr. CROSBY: No, I don't know just where that point is.

2073 Mr. McVANN: Is it not a fact that at David City, Nebraska on your Columbus branch the rates are the sum of the locals from Chicago and Kansas City?

Mr. CROSBY: I do not think they are.

Mr. McVANN: You do grade out at about Aurora, don't you?

Mr. CROSBY: I said Exeter, that would be east of Aurora, along about York, I think.

Mr. McVANN: Don't your rates as a matter of fact come together at Aurora?

Mr. CROSBY: They do, but they come together east of Aurora too.

Mr. McVANN: Do you recall about how far east of Aurora?

Mr. CROSBY: I am trying to find some information here which will give me some information on the subject. It is somewhere east of Aurora about on a line drawn north and south through Exeter, Nebraska.

Mr. McVANN: How long a distance is that from the Missouri River, generally?

Mr. CROSBY: About one hundred miles, I should say.

Mr. McVANN: And in that part of the State of Nebraska, 2074 that is one hundred miles from west of the Missouri River is there not a very much thicker population and heavier business than in, say, the next parallel of one hundred miles west.

Mr. CROSBY: There is no question about it, there is the great population within the State of Nebraska, but there is not any greater in that portion of Nebraska than there is in the territory west of where the combination governs.

Mr. McVANN: In the territory west of it, Omaha is not in a precise equality with St. Louis and Chicago?

Mr. CROSBY: It has the best of Chicago.

Mr. McVANN: But not of St. Louis?

Mr. CROSBY: It has in some articles like groceries.

Mr. McVANN: But in the ordinary class goods, those rates are so made up as to break on the St. Louis locals and St. Louis pays her locals to the Missouri River and local points?

Mr. CROSBY: Yes, but the jobber has the advantage of the carload rates, which are very often established.

Mr. McVANN: As to class rates, my statement is true?

Mr. CROSBY: Yes, sir.

2075 Mr. McVANN: That equalization which you bring about to bring the rates together you say is approximately one hundred miles west of Omaha?

Mr. CROSBY: Yes.

Mr. McVANN: In all the territory intervening, there is a difference on the combinations in favor of Chicago or St. Louis?

Mr. CROSBY: Not necessarily, because the difference between the carload rate in and less than carload rate out may take care of—

Mr. McVANN: I am speaking entirely about the class rate combination.

Mr. CROSBY: The St. Louis man ships at a class rate or the Chicago man, because he is a jobber, and ships in less than carload lots. Your jobber, in order to be a jobber, has to ship in in quantities and out in small quantities, has he not?

Mr. McVANN: It depends on what jobber he was.

Mr. CROSBY: He would not be much of a jobber if he did not ship in quantities?

Mr. McVANN: If he were a dry goods jobber, he would ship in on the class rates.

2076 Mr. CROSBY: In the case of his cotton piece goods he would not.

Mr. McVANN: He would ship in on class rates?

Mr. CROSBY: Not on the cotton piece goods, because that has a commodity rate, or it answers the purpose practically. It gives him protection as a jobber. The rate on the cotton piece goods, as you know, from St. Louis to Omaha is \$.35.

Mr. McVANN: Let us confine this to the first class, the dry goods proposition; the combination of first class rates which is spoken of here to all that territory east of of the Meridian which you make of one hundred miles west of Omaha, is against Omaha, is it not?

Mr. CROSBY: As compared with what?

Mr. McVANN: As compared with the St. Louis combination from the seaboard on first class.

Mr. CROSBY: Adding the first class to the first class, but I say that is not a fair exposition of the situation.

Mr. McVANN: No matter, but it is true so far as it goes?

2077 Mr. CROSBY: Add the first class to the first class, it makes it higher—

Mr. McVANN: Dry goods are first class, are they not?

Mr. CROSBY: Some are and some are not. They are from Omaha, but they are not all first class into Omaha.

Mr. McVANN: They are not?

Mr. CROSBY: No, cotton piece goods are dry goods.

Mr. McVANN: I do not understand it so.

Mr. CROSBY: They are so considered in the classification.

Mr. McVANN: Dry goods are one thing and cotton piece goods are another, both in the classification and in the trade.

Mr. CROSBY: They take the same rates, don't they?

Mr. McVANN: No.

Mr. CROSBY: From Omaha west?

Mr. McVANN: Yes.

Mr. CROSBY: You are talking about rates into Omaha and out of Omaha.

Mr. McVANN: I asked you if the first class rate from New York to Crete, Nebraska does not combine for a less amount on St. Louis than on Omaha?

2078 Mr. CROSBY: Yes, sir.

Mr. McVANN: And that is substantially true of all this district east of this one hundred mile meridian?

Mr. CROSBY: Practically yes. Those examples you gave are there, in which I attempted to analyze this morning.

Mr. McVANN: But it is substantially true that those examples are typical as to the combination of first class rates in all that territory?

Mr. CROSBY: The first class rates from St. Louis to Omaha, for example, added to the first class rate from Omaha to these points east of this 100 mile meridian will make up higher than the through rate from St. Louis to those points on account of this differential basis.

Commissioner CLARK: I understand the rate from the Atlantic seaboard to St. Louis is eighty-seven cents first class and to Kansas City is one dollar and forty-seven cents. Now, the St. Louis dealer that wanted to deal in Kansas City or west of the Missouri River would have to pay that \$.60, would he not, between St. Louis and Kansas City?

Mr. CROSBY: In certain territory, he would, but there is
2079 certain territory where the rate is not on the Kansas City combination.

Commissioner CLARK: I understood you, I think, to say that the Colorado common point rates were made on the Missouri River?

Mr. CROSBY: The all rail rates, yes, sir.

Commissioner CLARK: And the Utah common points?

Mr. CROSBY: The same way. The rate to Leadville, Colorado is based on the Missouri River from the Atlantic seaboard.

Mr. HOLDEN: You spoke of certain points that would break on the Missouri River. Just indicate where those points are, for shipments.

Mr. CROSBY: For example, Tecumseh, Crete, Lincoln, Wichita, for example, and certain points in Kansas where the short line distance is not through the Missouri River, that have a differential basis, that is a percentage basis; for example, the rate to Wichita from St. Louis is ninety-five per cent of the combination of the rate from St. Louis to Kansas City and Kansas City to Wichita.

2080 Mr. HOLDEN: And that results from what, that in a direct line from St. Louis it does not go through the Missouri River?

Mr. CROSBY: Yes.

Mr. HOLDEN: And those are the cases you referred to where they took less than the Missouri combination in shipments from St. Louis?

Mr. CROSBY: Yes.

Mr. McVANN: Did I understand you that the rates to Colorado and Utah are combinations of the rates from Chicago to Missouri River or Atlantic seaboard to the Missouri River?

Mr. CROSBY: Either way.

Mr. McVANN: It works either way.

Mr. CROSBY: A combination does not make from Chicago to any of the Missouri River points. The rates are all based on the Mississippi River and the rates from New York are based on \$.87 first class from New York to the Mississippi River, \$.60 from the Mississippi River to the Missouri River and \$1.25 from the Missouri River to Colorado.

Mr. McVANN: I asked you for information rather than to get it in the testimony. I wanted to know if that was the fact.

2081 Mr. CROSBY: Yes.

Mr. BARLOW: Taking the general scheme of making rates based on the combination of locals between the rivers, Chicago is practically the only city of importance that is at a disadvantage, that is St. Louis and Kansas City.

Mr. CROSBY: On your first class goods it is at a disadvantage, but the disadvantage——

Mr. BARLOW: I mean first class.

Mr. CROSBY: But in lower classes you are not at any greater disadvantage than the Mississippi River jobber.

(Witness excluded.)

2082 Mr. LYNDE: I wish to put on Mr. Seymour next, but I understand that Mr. Barlow desires to make a statement.

Commissioner CLARK: We will hear Mr. Barlow, but I think perhaps we had better not interrupt the testimony of the defense for that purpose.

Mr. LYNDE: I will call Mr. Seymour.

EDWARD J. SEYMOUR, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination:

Mr. LYNDE: State your name, please.

Mr. SEYMOUR: Edward J. Seymour.

Mr. LYNDE: You are connected with the Chicago & Northwestern Railroad Company are you not?

Mr. SEYMOUR: I am.

Mr. LYNDE: In what capacity?

Mr. SEYMOUR: Assistant General Freight Agent.

Mr. LYNDE: How long have you been connected with the traffic department of that company?

Mr. SEYMOUR: Fourteen years.

2083 Mr. LYNDE: You are familiar with the present adjustment of rates that are now in controversy here?

Mr. SEYMOUR: Somewhat, yes; I think I understand it.

Mr. LYNDE: And you know what the basis is of the pending complaint, what they are after?

Mr. SEYMOUR: I do.

Mr. LYNDE: You have read the testimony that has been introduced thus far? both at Kansas City and here?

Mr. SEYMOUR: I have.

Mr. LYNDE: I will ask you to state what, in your opinion would be the effect of a reduction in rates from the seaboard to the Missouri River points such as is asked for in this complaint on rates to intermediate points, that is to say, territory between the Mississippi River and the Missouri River?

Mr. SEYMOUR: If, as I see it,—if the rates from the seaboard— if the prayer of the petition were granted on \$1.10 basis as they ask for, and the fourth section of the law was applied, it would reduce the revenues of the Northwestern road to every station between the Mississippi River and the Missouri River and south of the Minnesota State line.

2084 Mr. LYNDE: That same effect would also prevail west of the Missouri River, would it not?

Mr. SEYMOUR: Yes, sir; our proportions of these rates would be reduced correspondingly on all traffic east of Nevada, and I do not know but what east of Kearney where the trans-continental rate commences.

Mr. LYNDE: It appears here, and I think there is no question but what the fact is that rates to points west of the Missouri River are based on the Missouri River; that is true, is it not?

Mr. SEYMOUR: Yes, as a general rule.

Mr. LYNDE: And a reduction, therefore, in the rates from the seaboard to the Missouri River would necessarily lead to a corresponding reduction in the rates from the seaboard to these points west of the Missouri River.

Mr. SEYMOUR: Yes, sir.

Mr. LYNDE: What would be the effect of a reduction of rates from Chicago into this territory?

Mr. SEYMOUR: Why, if the rates,—if the local rates to the ter-

ritory west of the Mississippi River were reduced, it would reduce every rate from the Northwestern Railroad, from every manufacturing point north of the Illinois State line. Every manufacturing point in the State of Wisconsin, Janesville, Beloit, Oshkosh, Fond du Lac, in fact clear up to the Michigan line, clear to Lake Superior, almost, because we apply the Chicago rate from that territory to all territory west of the Mississippi River.

Mr. LYNDE: Is that true of Minnesota territory also?

Mr. SEYMOUR: Well, now, so far as Minnesota is concerned, I could reason it thus: if the rate from Chicago to the Missouri River were changed, because of the change from the seaboard, why, that would naturally change the rate to Sioux Falls, and if St. Paul, with its distance of 270 miles to Sioux Falls made corresponding reduction, it would no doubt reduce the rate in South Dakota over our line, because the combination on Sioux Falls would govern, and, of course, I could not exactly say what the reduction would be, but if the reduction was had to Sioux Falls, naturally it would go to the Minnesota points intermediate on the lines running to Sioux Falls.

Mr. LYNDE: Then, Mr. Seymour, as a matter of fact, assuming a reduction in rates from the Seaboard to the Missouri River cities as asked for in this complaint, and the corresponding relative reduction in rates from Chicago to this territory, isn't it true that practically every freight rate on the Northwestern road would be reduced.

Mr. SEYMOUR: Without exception, that is, provided the correlation of reductions went to all the centers.

Mr. LYNDE: I am assuming that.

Mr. SEYMOUR: Yes.

Mr. LYNDE: How long has this basis of rates been in existence, that is to say, the Mississippi River being the basing point from the seaboard and the Missouri River, on traffic destined west of there?

Mr. SEYMOUR: It is impossible for me to answer that question, but I should say about twenty-five or thirty years according to the archives; at least, ever since the eastern lines had rails to St. Louis they fixed a basis.

Mr. LYNDE: What would be the effect of the granting of the petition as it is now presented on that basis?

Mr. SEYMOUR: From the present point of view, I should say it would disturb the entire fabric of rate making as now established, to all of the territory; I do not know where it would end. Speaking for the Northwestern road, it would reduce our entire revenues; there is no doubt about that.

Mr. LYNDE: And our rates into the territory west?

Mr. SEYMOUR: Yes, that is with the limits I have placed.

Mr. LYNDE: I think that is all I care to ask.

Cross-examination:

Mr. ATWOOD: How about the proportion west of Racine, is it 40 cents to St. Paul?

Mr. SEYMOUR: No, sir; I think we get the 60 cent scale from Racine.

Mr. ATWOOD: And Milwaukee?

Mr. SEYMOUR: I think so.

Mr. ATWOOD: And Beloit?

Mr. SEYMOUR: Well, of course, the business from the seaboard would take the 40 cents from Milwaukee because it is a port; but Racine is not a port.

Mr. ATWOOD: Now, when did the 40 cent proportional commence, that was in 1898, I think they have told us.

2088 Mr. SEYMOUR: I will have to take it as stated; I do not know.

Mr. ATWOOD: They are all agreed that that is so, May 1897.

Mr. SEYMOUR: I was not engaged with the Northwestern then, I was not in this business.

Mr. ATWOOD: The establishment of that 40 cent proportional did not seem to produce any effect upon Racine, Milwaukee, or any of these other towns, did it?

Mr. SEYMOUR: I don't see why it should, if it did not on Chicago. Racine, however, is not a port of entry.

Mr. LYNDE: No, I understand that, but the question is whether the establishment of the 40 cent proportional did affect the 60 cent proportional?

Mr. SEYMOUR: Not any more than it did Chicago.

Commissioner CLARK: And you have now a local between Chicago and St. Paul of 60 cents?

Mr. SEYMOUR: Yes, sir.

Commissioner CLARK: And what rate does traffic originate in C. F. A. territory take?

2089 Mr. SEYMOUR: There is a graded scale, Mr. Commissioner I cannot off hand tell you, but there is a difference.

Commissioner CLARK: Well, from Cleveland.

Commissioner CLARK: Cleveland, I haven't got Cleveland. I have Pittsburg, I think.

Commissioner CLARK: Well, that will do.

Mr. SEYMOUR: Pittsburg to St. Paul, did you say?

Commissioner CLARK: Yes.

Mr. SEYMOUR: Pittsburg is first-class, 95 cents.

Commissioner CLARK: To St. Paul?

Mr. SEYMOUR: Yes.

Commissioner CLARK: What do you get out of that?

Mr. SEYMOUR: I have not figured the divisions out recently, I haven't got the divisions here.

Commissioner CLARK: Do you know the basis of that division?

Mr. SEYMOUR: Well, it is a differential division, Mr. Commissioner, it is a published document.

Commissioner CLARK: Do you know what the percentage is?

Mr. SEYMOUR: No, I don't know, I don't remember it.

2090 Mr. ATWOOD: Do you know whether it is more or less than the 40 cents?

Mr. SEYMOUR: Well, it should be more naturally because of the relation of the haul, the relation of the haul would be different.

Commissioner CLARK: Now, what is the rate from Pittsburg to Omaha?

Mr. SEYMOUR: Pittsburg to Omaha? Yes, I have got that I think. Pittsburg to Omaha is \$1.15.

Commissioner CLARK: Do you know how that divides?

Mr. SEYMOUR: Yes, we get 75½ cents per 100 pounds of the Mississippi River.

Mr. WEBSTER: You get 60 cents from the Mississippi River.

Mr. LYNDE: You mean west of Chicago?

Mr. SEYMOUR: Oh, yes, I mean west of Chicago.

Commissioner CLARK: You get what?

Mr. SEYMOUR: We get 75½ cents west of Chicago, that is adding our proportion up to the Mississippi River plus this 60 cents.

Commissioner CLARK: Now, in your judgment, Mr. Seymour, if the rates were changed west of the Mississippi River crossings, would it affect the rates on points east of Mississippi River?

Mr. SEYMOUR: Well, I cannot quite answer that fully because our haul east of the Mississippi River is a very small one, you know, we only go to the Mississippi River, the direct main line, and almost all of the points in eastern and northern Illinois are based on a percentage basis established by conditions, and I don't know as it would affect much the western Illinois territory. I had not figured into that. It presumably would with such a low basis as is asked for, if the same relation exists between the present rates and the rates as prayed for; I don't know just exactly what the effect would be.

Commissioner CLARK: Well, would there be any difference except in the degree as between a large reduction and a small reduction?

Mr. SEYMOUR: I don't quite get the drift of your question.

Commissioner CLARK: Well, would a reduction of say, 30 cents be any different in its effect than a reduction of 10 cents, except in the difference between 10 cents and 30 cents?

Mr. SEYMOUR: That is all.

2092 Commissioner CLARK: Is there any business that you get from the east through Chicago for St. Paul, Minneapolis and the Minnesota transfer upon which you get less than the 40 cents that you get on the seaboard business?

Mr. SEYMOUR: I believe there is a commodity rate—

Commissioner CLARK: I am talking about Class rates.

Mr. SEYMOUR: Not that I know about.

Commissioner CLARK: Is there any combination on Chicago of class rates, upon which you get more between Chicago and St. Paul than your 60 cent local?

Mr. SEYMOUR: Where we get more than 60 cents?

Commissioner CLARK: Yes.

Mr. SEYMOUR: I cannot recall any just now. I am doubtful that there is any.

Commissioner CLARK: Are all of the divisions which your company gets in the C. F. A. territory based on the Mississippi River?

Mr. SEYMOUR: No, sir—that is, do you mean business for St. Paul and Minneapolis?

Commissioner CLARK: No, Missouri River and west.

Mr. SEYMOUR: Yes, practically.

2093 Commissioner CLARK: Then there is not the same difference in your divisions on the business to the Missouri River that there is on your business to St. Paul?

Mr. SEYMOUR: No, sir. No, sir; as I illustrated just now, we get 75½ cents from Chicago.

Commissioner CLARK: Yes, that was one concrete case. I want to get at whether or not that was generally true.

Mr. SEYMOUR: That would be generally true in the Central Freight Association.

Mr. BARLOW: I would like to ask Mr. Seymour a question.

Commissioner CLARK: All right, Mr. Barlow.

Mr. BARLOW: You were asked Mr. Seymour, whether the establishment of a 40 cent scale on business coming from the east affected the business from Chicago and Milwaukee. I mean, the rates on those points. You did not quite answer definitely. Is it not true that it does affect the rates from Milwaukee and Chicago, and that you are constantly being importuned and constantly putting in commodity rates from Chicago and Milwaukee, not only from those towns but from all of your manufacturing points in Wisconsin in order to meet this eastern competition in St. Paul and Minnesota?

Mr. SEYMOUR: That is true.

Mr. BARLOW: Are you not hauling paper for 12½ cents when you might get 15 cents and 18 cents if it was not for the eastern rate?

Mr. SEYMOUR: Yes.

Mr. BARLOW: Therefore, the rates made to meet alleged water competition do affect the rates of Chicago and Milwaukee and all of your intermediate territory?

Mr. SEYMOUR: Yes, our manufacturers have to get the raw material in competition as against the raw material at the seaboard, where they make some commodity rates.

Mr. BARLOW: Now, do you receive tonnage reports of the business carried between Chicago and the Twin Cities?

Mr. SEYMOUR: Yes, I see them I suppose, sometimes.

Mr. BARLOW: Isn't it true that the tonnage from Chicago is practically made up of this—largely made up of the business on which you make these low commodity rates to meet the eastern competition?

Mr. SEYMOUR: I haven't had a chance to analyze the proportion, in other words to make it more simple, the reports as compiled
2095 show all the traffic from whatever source going into the Twin Cities, and I have not made an analysis as to just the relation between the east and the west.

Mr. BARLOW: Did you happen to observe that the amount of first, second and third class freight carried from Chicago and Milwaukee locally between the Twin Cities is very small?

Mr. SEYMOUR: I say I have not made an analysis of the tonnage.

Mr. BARLOW: That is all.

Mr. ATWOOD: What are the—what about the number of articles

that take the commodity rate to St. Paul and to the Missouri River, how does that compare?

Mr. SEYMOUR: I should say the Missouri River is greater off hand. I have not counted it. I would have to take the tariffs and count it to see which has got the most.

Commissioner CLARK: Anything further with this witness, gentlemen?

Mr. ATWOOD: That is all.

Mr. LYNDE: That is all.

2096 Commissioner CLARK: You can stand aside, Mr. Seymour.
Mr. ELLIS: I have a witness by whom I simply want to put in a statement, and he has been here all day and wants to get away. He simply wants to identify a statement and it will only take a moment, and I should like to put him on now.

Commissioner CLARK: All right.

D. M. McGEEN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination:

Mr. ELLIS: Give the stenographer your name.

Mr. McGEEN: D. M. McGeen.

Mr. ELLIS: What is your employment?

Mr. McGEEN: Contracting freight agent for the Milwaukee & St. Paul.

Mr. ELLIS: And have you recently been requested to compile a statement showing the estimated value and weight per cars of certain commodities in the dry goods trade, and to compute the freight
2097 on the Missouri River basis of freight and on the Twin City basis for comparison?

Mr. McGEEN: Yes, sir.

Mr. ELLIS: Have you that statement with you?

Mr. McGEEN: Yes, sir.

Mr. ELLIS: Now, will you explain how you secured—what is your first column, the weight of the package, the number of the packages per case?

Mr. ATWOOD: Have you another copy of that?

Mr. ELLIS: No.

Mr. ATWOOD: Will you have it copied so that we may secure one?

Mr. ELLIS: I am going to have it copied as soon as I get it in and furnish you with a copy.

Mr. McGEEN: The first column is the number of cases or dozens per case.

Mr. ELLIS: What is the next column?

Mr. McGEEN: The next column is the weight, estimated per case.

Mr. ELLIS: What is the next column?

Mr. McGEEN: The next column is the number of cases per car.

2098 Mr. ELLIS: And the next one?

Mr. McGEEN: And the next one is the weight per car.

Mr. ELLIS: Now, that far, how did you secure the information?

Mr. McGEEN: I got this information from the various buyers in the jobbing houses.

Mr. ELLIS: What jobbing houses did you get it from?

Mr. McGEEN: Well, Garson, Pirie, Scott; M. D. Wells & Company; Boot and Shoes, and the Chicago Rubber Shoe Company, dealers in rubber goods, boots and shoes and clothing.

Mr. ELLIS: Any other house furnish you the information?

Mr. McGEEN: That is all.

Mr. ELLIS: That carries you up to the weight per car. Then beyond that is the statement computation?

Mr. McGEEN: Yes, sir.

Mr. ELLIS: Who made them?

Mr. McGEEN: Well, I made them based on the rate of \$1.15 from the seaboard to the Mississippi River and \$1.47 from the seaboard to the Missouri River.

Mr. ELLIS: The computation in the table you made yourself?

Mr. McGEEN: Yes, sir.

Mr. ELLIS: We offer that in evidence, and I want to ask the stenographer to have some copies made of that for us to-morrow.

Mr. McGEEN: Any further questions?

Commissioner CLARK: Anything further?

Mr. ELLIS: No.

Commissioner CLARK: You may stand aside, sir.

Mr. BUTLER: We of the Twin Cities think that most everything that it is desired to call to the attention of the Commission has been offered and brought out, but we would like if you will permit to offer some testimony of Mr. White, which will not take in the direct more than fifteen or twenty minutes, and I am assured by Mr. Atwood that he will not examine on the cross examination at length.

Mr. ATWOOD: He said his questions would not amount to anything, and on that basis I won't cross-examine at length.

Commissioner CLARK: On that basis, I do not think it is 2100 worth going into it. I think we will hear Mr. Barlow first.

Mr. BARLOW: Does the Commission desire me to take the witness stand?

Commissioner CLARK: Yes, you will please be sworn Mr. Barlow and be a witness before the Commission.

(The paper was received in evidence and marked "Exhibit I", attached to Mr. McGeen's testimony.)

2101 H. C. BARLOW, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination.

Commissioner CLARK: Please give the stenographer your name and residence?

Mr. BARLOW: Henry C. Barlow, Executive Director Chicago Association of Commerce.

Commissioner CLARK: Now, Mr. Barlow, the Commission would like to have you make a concise statement of the manner in which the commercial interests in Chicago will be affected, if at all, by a change in the rates as prayed for, or by a change along that line differing in degree from that prayed for?

Mr. BARLOW: Well, our position is, Mr. Commissioner, that transportation charges affect values. They are a part of values on most everything; even real estate, if you please, and immovable things. If that be true, then all shippers are interested in transportation charges, and all commodities. Generally speaking, the basis of rates to the west that has been in effect for a great many years, 2102 not dealing with certain exceptions as stated by Mr. Crosby that grow up by reason of the rulings of certain commissions and other conditions, has been the combination from the seaboard on the Mississippi river and then on the Missouri river, and then on the local west. In other words, to Grand Island, Nebraska, we will say, the rate from New York, as I understand is made up of the rate to East St. Louis plus the rate to Kansas City, plus the rate from Kansas City beyond.

Now, that rule does not hold good so far as Chicago is concerned. Wherever the combination is made, Chicago, on first-class,—and I speak entirely of first-class to save going over the whole list, would be 8 cents a hundred at a disadvantage in the freight rate as compared with Missouri River points, assuming the combination of locals were always made in that way.

It seems to me that it is a mistaken idea to think that the railroads arbitrarily established that condition. No one here has been able to say how long that general practice has been in effect. When the steamers came into Chicago at an early day, they brought 2103 their trade and dumped it on the docks and collected their charges and the ox teams took it away. When the first road was built from here to Elgin, it simply took the place of the ox team. The same thing was substantially true at St. Louis. Boats came up and down the river and landed their cargoes at the docks and the ox teams carried them away. In an early day the same thing was true undoubtedly at Kansas City and Omaha and this basis grew up and even, I believe, antedated the railroads, and on that basis enormous commercial interests have been established, both at the rivers and on the lakes.

Now, the complaint and testimony offered here as I understand it is, that that condition should continue; that that seems to be the ideal condition so far as the building up of communities is concerned, and to the continuation of that basis, so far as I understand the commercial interest of Chicago, we have no objection. We believe that great markets are necessary; that great store houses are necessary. That it is utterly impossible to put commodities from the manufacturer into the hands of the consumers direct. 2104 In other words that it is impossible otherwise for a manufacturer in New England to put a shirt on a boy on a farm in Nebraska before he freezes to death.

As illustrating that let me say that during the San Francisco disaster, they telegraphed us asking if we could ship forty thousand double woolen blankets right in the middle of June when the season was over. They needed them there, and we shipped them within twenty-four hours. Now, a manufacturer could not have done that. It takes great warehouses to protect the interests of the people, and these gentlemen on the river seem to think that the development of that commerce is best brought about by a combination of locals on the great markets. To that we acquiesce, as I say, but we ask that we be given the advantage, if there is an advantage. If there is not an advantage, I assume that these gentlemen would not be here.

But when that advantage is sought to be obtained by the making of rates from the seaboard to Kansas City, as set forth in this complaint, then you destroy at St. Louis and Kansas City the conditions, which I understand the complaint hopes to build up at the Missouri River.

2105 The combination of locals can only be established by the reduction of outbound rates from the various markets.

Now, as to the effect of this proposed adjustment, particularly on the rates, I have taken the \$1.10 rate as the basis of my computations and as I understand the complaint, it asks this Commission to make a rate of \$1.10,—I deal with first class without going into all the others—from New York to the Missouri river, and proportional reductions from other points in trunk line territory. The proportion of the reduction is 25 per cent in round figures. That would make the rate from Philadelphia \$1.06, from Baltimore \$1.04, from Albany and Utica 99 cents, from Rochester 91 cents, from Buffalo 87 cents, from Cleveland 84 cents, from Sandusky 81 cents, and from Detroit and Toledo 79 cents, vs. a local rate which I do not understand any request is made to have reduced by the Missouri River people of 60 cents from Chicago. Therefore a proportional reduction would carry the Chicago rate plus 7 cents to Buffalo, New York, all rail.

2106 Now, the business in the trunk line territory has substantially grown up and developed on what is called the trunk line differentials. We will assume, if you please, that the \$1.10 rate is established on first class from New York, and the trunk line differentials are applied. Then the rates from Philadelphia would be \$1.04 vs. 80 cents from Chicago; from Baltimore \$1.02, Albany and Utica 95 cents; Rochester 84 cents; or 4 cents above the local rate from Chicago; Buffalo 78½ cents, Cleveland 74½ cents, Toledo and Detroit 68 cents, and Sandusky 70 cents. Assuming that the local rate from Chicago is not to be disturbed, and that is the assumption from the testimony, then the rate from Rochester would only be four cents above Chicago and the rates from Buffalo, Cleveland, Detroit, Toledo and Sandusky would be less than from Chicago.

I assume that that condition cannot exist, nor that this Commission will not create such a condition. Therefore, if the \$1.10 basis is put in effect and the rates from the territory of Buffalo and the east are made on the trunk line differentials or the same proportion of

reduction, then the rates from Chicago must come down
 2107 substantially in proportion to the reduction from the other
 points.

Again, it seems to me that this case strikes at the very basis of making rates on which the business of the western country has developed, and I want to, if I can, point out what I believe to be a natural conflict between the lines and the manufacturing interests east of Chicago and the lines and manufacturing interests at and west of Chicago. There is a constant effort always on the part of trunk lines to force the product of their western manufacturers farther west all the time, and they have generally been willing to pro-rate with any of the western lines in order to force a combination of rates west, in order that the eastern manufacturers may use the west as a dumping ground. That was particularly true in my experience with large corporations handling large tonnage, paper if you please, and I observed that in my connection with the Chicago Association of Commerce.

As illustrative of that, the Central Freight Association lines recently—I mean within the last six or seven months—stated
 2108 their willingness and by resolution suggested to the lines that they break the barriers so-called, at the Mississippi river, and make the rates continuous.

Now, if transportation is a part of values, and I believe we all admit that principle, I do not think any one will deny it, then the cost of manufacturing in the east must be to some extent less than the cost of manufacturing in the west, or else they could not overcome the difference in freight rates. Whatever reduction is made in the freight rates assists them in overcoming their disabilities.

Now, if the system of rates under which we have been operating, the combination of locals, I mean with all these other cities except Chicago,—and I will illustrate that a little further,—all rates from Chicago to the northwest so far as St. Paul, Minneapolis, the Great Northern and Northern Pacific and western systems are concerned, are all made up of combinations of locals on St. Paul. We have had the local rate from Chicago to St. Paul vs. the local rate beyond. If we come to destroy that principle in the west, so
 2109 far as this case is applicable, it seems to me it establishes the principle of through rate vs. the combination of locals. Then all the business of this country must be readjusted to this new condition.

In my judgment, and our committee's think the same way, that cannot be done violently as suggested in this case, without very seriously disturbing values. I feel confident that it is reasonable to suppose and expect that if through rates are to exist from the seaboard to Kansas City and St. Joe, they cannot stop there, they must go on. I think you foresee without any evidence, that complaints will arise all over for that adjustment, and certainly if they go through from the seaboard they must go through from Chicago and if we go away from this basis of making rates from Chicago southeast, a combination of the Ohio rates to the west of the river and the northwest of the river, it is natural to expect that we must then come down, as I

said before to a general scheme of through rates vs. combinations of locals.

Now, Chicago is prepared to accept, I believe, either horn of the dilemma. If we can have ample notice and ample time to
2110 adjust ourselves and can secure all advantage which is claimed for through rates over a combination of locals, if any it is, we will accept it, although we would prefer for the present at least, a combination of locals. We cannot however, as I said before, violently disturb these values.

If Rochester and all these eastern points can go to the Missouri river at very much less than the combination of locals, then Chicago must readjust herself to the condition, and so must St. Louis and every other city.

Where the general scheme applies of a combination of locals of the Mississippi and Missouri rivers, I fail to see either as a traffic official or a man accustomed now to look at things from a commercial point of view, where St. Joe is at any disadvantage, or where Omaha is at any disadvantage; in that territory immediately west, governed by differentials, where the rates are made practically beyond the control of the railroads, I can see where the combination of locals does not fit the case, and we are similarly situated in a great deal of territory.

I wish to impress upon the Commission my firm belief and
2111 the belief of our committees, and I express that belief, coming from them at one o'clock today,—that this adjust of rates would lead to a change in the values so far as the cost of transportation affects them. It may even lead to a change in the method of doing business, and a very serious change. We may have to locate on the Missouri river and redistribute from there in order to get the benefit of these rates, as the Crane Company of this city are doing now, furnishing nearly all of their southeastern business from their works at Bridgeport. We might have to follow the example of Butler Brothers of this city who have recently located at Kansas City and Minneapolis, in order to get the benefit of the lowest basis of the combination of rates.

We do not believe that is necessary; we think it is an extravagant waste of commerce, and if the combination of locals is to be the rule, then we, in union with the other cities should enjoy it.

Commissioner HARLAN: Mr. Barlow, it might be well to show in the record what official experience you have had in rate making.

2112 Mr. BARLOW: I have been warehouse man, traffic freight and warehouse, clerk, station agent, traveling freight agent, division freight agent, assistant general freight agent, general freight agent, traffic manager, general traffic manager, general manager, vice-president and president. That is my railroad experience.

Commissioner CLARK: And receiver.

Mr. BARLOW: And receiver. I beg pardon.

Commissioner HARLAN: Extending over what number of years?

Mr. BARLOW: Why. I began railroad service when a boy, about 16 years of age, I think. Now, as to commercial matters, for a year

or two I was the traffic manager of the General Paper Company which handled three or four million tons of freight a year in and out of their mills, and as such I had quite an experience in noting the effect of the freight rates upon a certain commodity. For the last two or three years I have been with the Chicago Association of Commerce, and as such have had some opportunity in observing the effect of freight rates upon communities.

2113 Commissioner HARLAN: That is all.

Commissioner CLARK: Any further questions?

Mr. ATWOOD: One question with the Commission's permission.

Commissioner CLARK: It will be permitted.

Mr. ATWOOD: Considerable of the merchandise comes in by the lake and rail route to Chicago, does it not?

Mr. BARLOW: Quite a good deal yes, sir.

Mr. ATWOOD: And on that you do not pay the 75 cents?

Mr. BARLOW: No, sir.

Mr. ATWOOD: What is the difference between 75 cents, or put it the other way, what is the average on that rate?

Mr. BARLOW: The rate from New York to Chicago on first class,— and I will speak of that only for convenience sake—

Mr. ATWOOD: Yes, that is the way you have been speaking.

Mr. BARLOW: Is 62 cents.

Mr. ATWOOD: And there is as much difference in the lower rates and commodities, grouping them as a whole, between the actual lake carriage and rail carriage of Chicago, in just round
2114 numbers, I don't care for the details.

Mr. BARLOW: I think the difference on the lower classes is only about 4 cents.

Mr. ATWOOD: Now one question with regard to west of St. Paul.

Mr. BARLOW: Will you let me go a little further on that?

Mr. ATWOOD: Yes.

Mr. BARLOW: It may be interesting for the gentlemen of the Commission to know that you can ship goods from New York, lake and rail and canal and lake, through Chicago to St. Louis and reship them to Kansas City including the 285 miles of rail haul from here to St. Louis, for less than you can ship them canal and lake or lake and rail to Chicago and then reship them to Kansas City. In other words, the readjustment of rates has been carried 284 miles southwest of Chicago and we no longer can ship lake and rail or canal and rail at as favorable terms as Omaha or Kansas City.

Mr. ATWOOD: Is that the whole of your statement?

Mr. BARLOW: Yes, I just wanted to illustrate that to show
2115 that the lake does not do us any good any more.

Mr. ATWOOD: The condition that you have just related, does not that indicate that the situation on the Mississippi river is dominated or at least largely controlled by water competition?

Mr. BARLOW: Why, I should say no. I have made a study of the rates from the Atlantic seaboard to St. Louis, two or three years ago and I can tell you about it, tell you about them as I found them to be, if you would like to know.

Mr. ATWOOD: If, as a fact, you do not think water competition cuts any figure I won't bother with it.

Mr. BARLOW: No, I don't think so. My investigations carried over a period of nearly two years, did not convince me that water competition was an element largely considered in the making of rates from Atlantic seaboard points to the west.

Mr. ATWOOD: Yet the fact remained that by water you can do those things you have just described to the Commission?

Mr. BARLOW: Yes.

Mr. ATWOOD: Now, about the commodity rates, Chicago
2116 out, you spoke of the disadvantage that accrued to Chicago under the first class. Is Mr. Crosby, when he told some one in response to a question, that they are at no disadvantage at commodity and also class rates taken as a whole, in error?

Mr. BARLOW: I apprehend he meant the differentials, which is 8 cents on the first class running down to as low as half a cent on the lower classes, some of them. On some of the lower classes it gets down as low as one cent and in some instances one-half a cent.

Mr. ATWOOD: So that would not be an appreciable condition?

Mr. BARLOW: Yes, I claim that everything affects it; a half a cent might be three or four dollars on a carload of nails.

Mr. ATWOOD: Then you do take issue with him?

Mr. BARLOW: Merely as to the degree.

Mr. ATWOOD: Now, on points west of St. Paul, shipments made to Chicago or some points in the west of St. Paul, are made up of the combination of locals on St. Paul, 60 cents from here to St. Paul and
plus the rate from St. Paul to Missoula, are they not?

2117 Mr. BARLOW: I cannot say whether it is on Helena and that country or not, but it is generally local on the Great Northern or Northern Pacific roads.

Mr. ATWOOD: Without regard to particular instances, do I understand that the west of St. Paul shipments originating in Chicago, that the rate is made up by adding the 60 cent local?

Mr. BARLOW: Generally, as soon as they get away from the Minnesota line.

Mr. ATWOOD: And the 40 per cent proportion did not change the situation or produce any result of which you have knowledge, did it?

Mr. BARLOW: From Chicago?

Mr. ATWOOD: Yes.

Mr. BARLOW: Why, certainly, the effect of the so-called water competition—I don't want to go into the water competition—the effect of those rates up there, Mr. Atwood, have been substantially to drive Chicago out of a large proportion of the traffic up there. Especially heavy commodities. Now, I mean when I say drive us out, I mean
in the direct shipments from Chicago. As I have stated, we

2118 must change our method of doing business. We are either compelled in that territory to ship direct such commodities as we buy in the east and take advantage of the lower rates, or absorb the difference in the rates, or go out of the business. Now, the adjustment of the rates on the seaboard traffic did cause Chicago to readjust her values in that territory very seriously.

Mr. ATWOOD: Chicago, in other words would be best served by a retention of the 60 cent proportional of the St. Paul rate.

Mr. BARLOW: We should be very glad to see it done.

2119 Mr. Barlow: *We should be very glad to see it done.*

Mr. ATWOOD: That is all.

Mr. BARLOW: I would be glad to file this with the Commission if they can make any use of it.

Mr. ATWOOD: All right.

Mr. BARLOW: I would like to put this in as H. C. Barlow exhibit No. 1.

Mr. HOLDEN: Have you copies of that?

Mr. BARLOW: No, I have not. I would like to say one more thing if the Commission will permit.

Commissioner CLARK: Certainly.

Mr. BARLOW: I have another exhibit here that may be of interest. I would like to file this exhibit with the commission and refer to it as H. C. Barlow exhibit B.

Assuming that the rates on basis of New York and Boston to Chicago, 75 cents, and to St. Louis, 87 cents, are not unreasonable, and there has been no testimony submitted that they are unreasonable, then the proposed reduction must come out of the rate of the lines west of the Missouri River. As the rates to St. Louis from New

York are equitable—

2120 Commissioner CLARK: Pardon me, do you mean west of the Missouri River?

Mr. BARLOW: West of the Mississippi River, I should say.

Commissioner CLARK: You said Missouri River.

Mr. BARLOW: I beg pardon. As the rate to St. Louis from New York are equitable, and the reduction proposed to Kansas City is on a scale of \$1.10, the proper adjustment west of the Mississippi River would be the difference between the rates from New York to St. Louis and the proposed through rates to Kansas City, which is 23 cents, 20¼, 14¼, 10¼ and 9.

These figures were made by me last May and you see they compare very favorable with the testimony.

Now, if the rates from New York and Boston to Kansas City are to be made on the same rate basis per mile, as from New York to Chicago, then we must assume that all operating expenses, cost of doing business and everything is substantially the same east and west of the Mississippi River, and if that be true then it follows that the proper division of a through rate from New York to Kansas City would be on a mileage basis. It then goes on to simply sub-

stantiate the first statement, that if that hypothesis is adopted as to rates, then all of the reduction must come out of the lines west of Chicago.

Now, I submit again, Mr. Commissioner, that in my judgment, a rate of 23 cents cannot be established from the Missouri River as a proportional rate without affecting very seriously all the values in this western country, and ultimately, if not immediately, cause a similar reduction in the local rates from the Mississippi River, which, if made, must be immediately followed by a similar re-

duction from Chicago and all the northwestern territory. We cannot maintain our present supremacy in the building up of this great Mississippi Valley territory on substantially any different adjustment of rates.

I thank the Commission and the gentlemen for listening to me so patiently.

Commissioner CLARK: Mr. Butler, you may call your witness.

Mr. BUTLER: Mr. White you may be sworn.

2122 H. E. WHITE, called as a witness, having been first duly sworn, testified as follows:

Direct examination:

Mr. BUTLER: State your full name, Mr. White.

Mr. WHITE: H. E. White.

Mr. BUTLER: And your place of residence and occupation?

Mr. WHITE: Engaged in the paper business in Minneapolis.

Mr. BUTLER: With what company?

Mr. WHITE: Minneapolis Paper Company.

Mr. BUTLER: Are you an officer of that company?

Mr. WHITE: I am Second Vice-President and have charge of the sales.

Mr. BUTLER: Have charge of the sales?

Mr. WHITE: Yes.

Mr. BUTLER: And generally in what territory do you sell?

Mr. WHITE: Well, speaking of our own firm we have been doing largely a local business and until within the past year we
2123 have not solicited business outside of the city of Minneapolis.

Mr. BUTLER: And are you connected with any local commercial organization in Minneapolis?

Mr. WHITE: Are you speaking of the firm, or me personally?

Mr. BUTLER: I am speaking of you personally.

Mr. WHITE: I am a member of the Commercial Club.

Mr. BUTLER: And state briefly and generally to the Commission what that is and what your connection with it is, and what you know about the subject of freight rates in the territory served by the jobbers and manufacturers of the Twin Cities.

Mr. WHITE: The Commercial Club is an organization incorporated under the laws of the State of Minnesota, I believe. It is made up of various jobbers, principally of jobbers and manufacturers. I cannot tell you definitely as to the territory covered by the various interests.

Mr. BUTLER: Well, generally the northwest and farther to the coast, I presume.

Mr. WHITE: Personally, we cover the territory in the north, northwest, a small portion south and southwest of Minneapolis.

2124 Mr. BUTLER: Has your Club a committee on transportation and are you connected with that committee?

Mr. WHITE: We have a subcommittee known as the Railway Committee, of which I am a member.

Mr. BUTLER: Now, do you know to what extent merchandise from the eastern points, Atlantic sea coast in your line or generally, come by way of lakes to Duluth or other western ports of the great lakes and from there to the Twin Cities?

Mr. WHITE: I can say that a very large proportion of certain particular lines come from points east of Buffalo moving by lakes.

Mr. BUTLER: Now, you may tell us whether or not the lake and rail transportation affects the price of such commodities as are carried over during the whole of the season, or whether it affects only during the open or shipping season?

Mr. WHITE: As I have said, there is a very large portion of certain lines moving in by lake and as the lake rates are considerably — than the all rail rates the natural disposition at the close of navigation, or about the close of navigation, therefore, is to 2125 stock up as heavily as we can. Of course, that depends somewhat upon market conditions. Prices are, therefore, to a large extent after the close of navigation, based very largely on the lake rates.

Mr. BUTLER: And does that extend over the whole closed period, over the whole year or only an extension over the open season?

Mr. WHITE: As I said that depends somewhat upon market conditions and the volume of business carried. We have in years past of some lines, carried practically a sufficient amount to cover car requirements, or as near as we know our requirements for the entire closed season.

Mr. BUTLER: Now, have you made any examination—in the first place, is Chicago a competitor in the shipping district served by the Twin Cities?

Mr. WHITE: We consider Chicago our strongest competitor.

Mr. BUTLER: Have you made an examination of the freight rates in force to find where the dividing line territorily based on freight rates to the consumer is between the Twin Cities and Chicago?

Mr. WHITE: Do you mean figuring on a basis of the rates 2126 from the seaboard to Minneapolis?

Mr. BUTLER: Yes.

Mr. WHITE: And the locals out and the rates from the seaboard to Chicago and the locals beyond?

Mr. BUTLER: Yes, that is it. That is the only way I know of getting the stuff to the consumer in the ordinary course.

Mr. WHITE: Well, by the territory covered by the lines of the C. M. & St. P. those rates meet at Wabasha.

Mr. BUTLER: How far south of the Twin Cities is Wabasha, or have you the figures right before you?

Mr. WHITE: I am not prepared to state the distance from the Twin Cities to Wabasha.

Mr. BUTLER: About fifty miles or such a matter is it not?

Mr. WHITE: Approximately that. They meet again on the M. & I. division at Farmington, twenty miles south of Minneapolis. They again meet at Butler, South Dakota.

Mr. BUTLER: How far from the Twin Cities?

Mr. WHITE: 256 miles west of Minneapolis, and 752 miles north-

2127 west of Chicago. They again meet on the H. & D. Division at James and Winship.

Mr. BUTLER: And Winship is in South Dakota?

Mr. WHITE: South Dakota.

Mr. BUTLER: Near the North Dakota line?

Mr. WHITE: Yes, sir.

Commissioner HARLAN: Mr. White, have you a document there showing these facts in detail?

2128 Mr. BUTLER: We have, Mr. Commissioner, a tracing of a map showing that line.

Commissioner HARLAN: I suggest then that that be offered in evidence.

Mr. BUTLER: I do not know whether it is better to leave with the Commission the tracing or to cause it to be blue printed, so that copies may be sent out and then leave the original with the Commission.

Commissioner HARLAN: It can be offered and then blue printed, if you desire.

Mr. BUTLER: Yes, I intended to ask permission to retain it long enough to cause that to be done, if the others are willing.

Mr. ATWOOD: Anything you want to do suits me.

Mr. BUTLER: And then the line extends out, generally speaking, to a point a little south of the middle on the western boundary of North Dakota?

Mr. WHITE: I believe so.

Mr. BUTLER: And as I understand it, tested by the freight rate from the seaboard to the consumer, Chicago is able to undersell the Twin Cities at all points southerly in Minnesota, Iowa and South Dakota, of the line you have so projected?

2129 Mr. WHITE: That is true, I believe, with a few exceptions, near Chamberlain on the Missouri river.

Mr. BUTLER: At least as far west as the Missouri river?

Mr. WHITE: Yes.

Mr. BUTLER: And at Chamberlain there is an exception by reason of what conditions, have you them in mind?

Mr. WHITE: Those points I refer to are a little east of Chamberlain. I mean by that that Chicago is — enabled to sell at a profit on south of that line, when Minneapolis would be selling at cost.

Mr. BARLOW: Will you mention for that line for my information, please; I was out of the room. You mean in Minnesota?

Mr. WHITE: I was using a map of the C. M. & St. P. as a basis of the territory covered by the C. M. & St. P. It divides at Wabash on the river division, Farmington on the M. & I. Division, Butler on the southern Minnesota, and Winship through James on the E. & D. Division.

2130 Mr. BUTLER: Now, so far we have confined our inquiries to merchandise originating at the seaboard and passing through the two gates, one at Chicago and one at the Twin Cities. Now, you may state to the Commission generally, and to what extent, if you are able, that the Twin Cities are originators or producers, or manufacturers.

Mr. WHITE: Let me explain that this condition I have described is true with reference to papers made at or near the seaboard, and the producing—paper producing district of New England. It does not hold true of papers produced at Minneapolis from raw materials. We have become large producers of paper from materials obtained at or near Minneapolis, and we are therefore enabled to sell beyond that line at a profit on those commodities.

Mr. BUTLER: That is stuff that is made at the Twin Cities?

Mr. WHITE: Yes, sir.

Mr. BUTLER: Now in what territory do you compete generally with these complaining cities of Omaha, Kansas City, St. Joseph and Sioux City?

Mr. WHITE: We meet them in some sections of Iowa, South Dakota and Montana.

2131 Mr. BUTLER: And at the Black Hills point?

Mr. WHITE: Yes, sir.

Mr. BUTLER: Now, you have made an examination of the St. Paul rate into the Black Hills, Black Hills points of Lead and Rapid City and Deadwood, both from the Twin Cities and from those Missouri River points that are complaining, have you?

Mr. WHITE: I have some figures here bearing on that matter.

Mr. BUTLER: Now if you can give the distance and the rates briefly and in a consecutive form so that it may go into the record, I wish you would do so. I think it has been spoken of heretofore.

Mr. WHITE: Well, with regard to Rapid City, according to my computation, the Twin Cities are 594 miles distant and our rates are on the basis of \$1.77 first class. The rates from Omaha,—or the distance from Omaha, rather is 552 miles, and their rates are on a basis of \$1.20 first class.

2132 Mr. BUTLER: An advantage in favor of Omaha of how much, fifty-seven cents, isn't it on first class?

Mr. WHITE: They have forty-two additional miles and an advantage of fifty-seven cents first class.

Mr. McVANN: Did you compute distances there by the old or the new line?

Mr. WHITE: The short line mileage.

Mr. McVANN: The short line mileage?

Mr. WHITE: From Omaha to Rapid City is the old line. Omaha has not been affected by the new construction; that is the mileage has not been affected.

Mr. McVANN: You say the short line distance from Omaha to Rapid City is still by the old line?

Mr. WHITE: Is still by the old line, yes, sir. I believe the mileage by the new line is 578 miles.

Mr. BUTLER: And have you made those comparisons in writing so that they may be left with the Commission as an exhibit?

Mr. WHITE: Yes, sir.

Mr. BUTLER: Then if that may be marked for identification, we will save the time of reading it.

(Said document was received in evidence and marked "Exhibit No. 2" attached to Mr. White's testimony.)

2133 Mr. BUTLER: Now, in addition to this statement which has been marked by the stenographer, this map is bearing upon the same matter to which you have referred?

Mr. WHITE: Yes, sir.

Commissioner HARLAN: Has that map been marked, Mr. Butler?

Mr. BUTLER: I think not.

Commissioner HARLAN: Better have it marked and then blue print it and sent back for the record.

(The map was received in evidence, marked "Exhibit 2" and attached to Mr. White's testimony.)

Mr. BUTLER: I think that is all I care to ask.

Commissioner CLARK: Any further questions of this witness?

Mr. BARLOW: I would like to ask the *question* a question.

Commissioner CLARK: All right.

Mr. BARLOW: Have you filed a comparison of rates from Chicago to points on the southern Minnesota Division of the Milwaukee and St. Paul Road, the line running out from La Crosse, versus the rate from that territory, versus the combination of rates from
2134 Chicago to St. Paul into that territory?

Mr. WHITE: You mean where those rates would divide on the basis of a sixty cent scale?

Mr. BARLOW: No, just the rates themselves.

Mr. WHITE: Using the rate from the seaboard.

Mr. BARLOW: No, the rates from Chicago locally.

Mr. WHITE: And from St. Paul and Minneapolis locally?

Mr. BARLOW: Yes, the through rates from Chicago to points say in southern Minnesota versus combinations from Chicago on St. Paul.

Mr. WHITE: I have not prepared such a map. I did not anticipate that the Commission would require such information.

Mr. BARLOW: Did I understand you to say Chicago can ship into that territory cheaper than St. Paul can?

Mr. WHITE: I testified that the rates from the Atlantic seaboard, and the locals out versus the rates from the Atlantic seaboard to Chicago and the locals out met at Wabash on or about a line drawn from Farmington, the line I have described.

Mr. BARLOW: That is within the direct influence of the
2135 Chicago lines?

Mr. WHITE: Yes.

Mr. BARLOW: That does not pass through St. Paul and Minneapolis?

Mr. WHITE: Yes, sir.

Commissioner HARLAN: Well, that fact appears graphically on this map, doesn't it?

Mr. WHITE: Yes, sir.

Mr. BARLOW: And those points are intermediate?

Mr. BUTLER: Between here and Sioux City?

Mr. BARLOW: Between Sioux Falls and Sioux City or some other point?

Mr. WHITE: That would be true of both Sioux City and Sioux Falls.

Mr. BARLOW: They are also affected by rates from Chicago to Minneapolis, are they not? the local rate of sixty cents out?

Mr. BUTLER: I think it is in substance just as you put it, Mr. Barlow. Is there anything more of this witness?

Commissioner CLARK: Anything further of this witness? You may stand aside Mr. White. Are there any further witnesses?

2136 I assume that counsel will prepare the briefs in this case and that oral argument will be had before the Commission, the oral argument, of course, at Washington.

Mr. ATWOOD: That could be fixed at this time, I presume.

Commissioner CLARK: No, I do not think we could fix a day for the oral argument. We can fix a date for the briefs, and there does not seem to be any probability of being able to arrange for argument until after the first of the year. Our usual time for filing briefs is fifteen days, and ten days for reply and five days for a reply brief.

Mr. ATWOOD: If counsel on all sides would agree, could we extend that with the consent of the Commission? Would you mind having that about doubled (addressing counsel)?

Mr. HOLDEN: I wouldn't mind it.

Mr. PEIRCE: I would like to ask that it be doubled because I have quite a number of briefs on hand now and a lot of hearings.

2137 Mr. ELLIS: I think if it were made thirty, thirty and fifteen days it would not be too much.

Commissioner CLARK: Well, if counsel will all agree to make it thirty and thirty and fifteen days, we will agree to it.

Mr. ELLIS: We will accept the suggestion.

Mr. WEBSTER: I think twenty and ten would about be right.

Mr. ELLIS: No, make it thirty, thirty and five.

Mr. ATWOOD: Yes:

Mr. BUTLER: Thirty, thirty, that would make it the last of January; that would be all right. If the Commission will permit that I will be glad to accept it.

Mr. WEBSTER: If we have it thirty, thirty and ten, then the Commission would be sitting in Washington and could hear it.

Mr. ELLIS: No, that comes on the first Monday.

Mr. WEBSTER: Yes, that is true.

Mr. ELLIS: Thirty, Thirty and ten would be best.

Mr. WEBSTER: Yes, we will agree to that.

Commissioner CLARK: Well, as I say, our general rule
2138 is the other way, but the complainants may have thirty days from now in which to file their briefs and serve copies on the defendants, and the defendants thirty days from that date in which to answer, and the complainants ten days thereafter in which to make reply, and we do not expect anybody to ask for an extension of time.

Commissioner HARLAN: I would like to ask whether it is not possible for some one to prepare an abstract of the testimony. It would be a great convenience for the Commission, and if counsel would agree on a printed statement, I think it would facilitate the examination of the case by the Commission.

Mr. ATWOOD: It ought to be done.

Commissioner HARLAN: It is a very important case.

Mr. ELLIS: I think we might stipulate an abstract or if we cannot agree——

Mr. ATWOOD: Well, I will say this: if we cannot agree on one, we will make a compilation of what we think is fair, because, of course, the record is very voluminous.

2139 Mr. HOLDEN: I expect an abstract should be made. I should like to understand as to the briefs of the intervenors, and the regulations as to their being served on the defendants.

Commissioner CLARK: Well, it seems to me that Sioux City stands in the light of a complainant intervenor, and the rest of them defendants. I think we will class them in that way, and give them the same time.

Mr. BUTLER: That is the Twin Cities as intervenors have the same time,—are entitled to the complainants' rule, and then the same time to answer, ten days?

Commissioner CLARK: We understand that the complainants will file copies of their briefs on all of the defendants, including the intervenors, and that that side will file copies of their briefs upon all of the complainants, and the Commission expects and requires fifteen copies of each for its use.

Mr. BARLOW: Thirty days from now?

Commissioner CLARK: Thirty days from now, thirty, thirty and ten.

Hearing closed.

2140 Before the Interstate Commerce Commission.

Docket No. 983.

Filed Mar. 8, 1907.

Docket No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY, a Corporation
et al., Complainants,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY, THE CHICAGO,
Burlington & Quincy Railway Company, The Chicago, Milwaukee
& St. Paul Railway, The Chicago & Northwestern Railway, The
Chicago Great Western Railway, Defendants.

Answer.

And now comes Chicago Great Western Railway Company, erroneously described in the above title as "The Chicago Great Western Railway), and answering the petition of the complainants, says:

1. Defendant denies any knowledge or information sufficient to form a belief as to the incorporation of the various alleged corporations mentioned in subdivision 1 of the petition, or as to the partnership relations of the various partnerships therein mentioned.

2. Answering subdivision 2 of the petition, this defendant admits that it has heard certain of the parties mentioned in subdivision 1

are engaged in mercantile or manufacturing business, and that they are shippers, but denies that each or any of the said complainants are either greatly and irreparably, or in any way, injured by any of the things set forth in the petition;

3. Answering subdivision 3, defendant admits that it, Chicago Great Western Railway Company, is a common carrier, and that it is engaged, with its connections, in transporting property from the Atlantic seaboard to Kansas City, St. Joseph, Omaha, St. Paul and Minneapolis; and that it is subject to the provisions of the Act to Regulate Commerce approved February 4, 1887, and the acts amendatory thereof and supplemental thereto; and defendant admits that there are certain corporations whose names resemble
2141 the names of the alleged other defendants that are also common carriers engaged in transporting the same character of traffic.

4. Answering the 4th subdivision of the petition, defendant admits that the cities of Kansas City, St. Joseph, and Omaha, are located on the line of this defendant's road, and on the lines of railway owned by certain corporations whose names resemble those mentioned in the petition; and defendant admits that Chicago & Northwestern Railway Company's lines do not reach St. Joseph or Kansas City directly, and that the lines of the Chicago, Milwaukee & St. Paul Railway Company, do not reach the city of St. Joseph directly; and defendant admits that this defendant and the companies commonly known as the Rock Island, the Burlington, the St. Paul and the Northwestern, are all parties to the Western Trunk Line Committee Joint Through Freight Tariff W. T. L. No. 786 I. C. C. No. 687, and amendments thereto, but this defendant is unable to state as to whether the said schedules are attached to the petition marked "Exhibit A," for the reason that no schedules were attached to the copy of the petition served upon this defendant;

Defendant admits that the through rates from the Atlantic seaboard to St. Paul and Minneapolis via standard lines subject to the official classification, are as stated in said subdivision 4.

5. Defendant admits that it divides the through rate with its eastern connections on the terms stated in subdivision 5.

6. Defendant admits that it and the Companies mentioned in subdivision 4 of this answer are parties to the Western Trunk Line Committee Joint Through Freight Tariff W. T. L. No. 215, I. C. C. No. 471, but as to whether the same is correctly set forth in the Exhibit B attached to the petition, this defendant is unable to say, for the reason that said exhibit was not attached to the copy of said petition served upon this defendant. Defendant admits that the local rates from Mississippi River points to Chicago to Kansas City, St.

2142 Joseph and Omaha, are as set forth in subdivision 6 of said petition, and admits that the standard all rail through rates from New York to said Kansas City, St. Joseph and Omaha are as set forth in said subdivision; and this defendant admits that it divides the said through rate with its eastern connections in the proportion stated in said subdivision.

7. Answering subdivision 7, defendant admits that the distances from New York by way of Chicago to Minneapolis, St. Paul, Kansas

City and Omaha are as stated in the table embraced in subdivision 7 of the petition, but defendant denies that the distances from New York to St. Paul and Minneapolis, and from New York to Omaha, St. Joseph and Kansas City are substantially the same, and avers that the said allegation in said subdivision 7 is contradicted by the said table embraced therein.

8. Answering subdivision 8 of the petition, defendant denies each and every allegation contained therein.

9. Answering subdivision 9 of said petition, defendant denies any knowledge or information sufficient to form a belief as to the truth of the very indefinite allegations contained therein, and hence denies the same, and asks that the petitioners be directed to make the same more definite, and to prove said allegations.

10. Answering subdivision 10, this defendant denies each and every allegation, matter and thing therein contained.

11. Answering subdivision 11, defendant denies each and every allegation, matter and thing therein contained.

12. Answering subdivision 12, defendant denies each and every allegation, matter and thing therein contained.

13. Further answering the said petition, defendant alleges that the rates to St. Paul and Minneapolis are necessarily unduly low by reason of the competition of the said all rail lines with the lake and water lines via the Great Lakes and other competitive conditions over which this defendant has no control; that the rates by

2143 said lake and water lines are much lower than the said all rail rates from New York to St. Paul and Minneapolis set forth in said petition, and that it is impossible for this defendant and the other railroads to secure rates that are adequately high in competition with the said lake and rail lines, and that said competition is solely responsible for the low rates prevailing between New York and St. Paul and Minneapolis, and that said competition is not effective as against all rail lines to Missouri River points;

This defendant further alleges that the tariff rates from New York and all other points to Kansas City, St. Joseph and Omaha are fair and are low; that none of them are unduly high, and that the said rates do neither unduly nor in any way discriminate against the said cities of Kansas City, St. Joseph and Omaha, or the merchants or other persons doing business at said places; and this defendant denies each and every allegation, matter and thing in the said petition contained not hereinbefore admitted or answered unto.

Wherefore defendant prays that it may be hence dismissed.

(Signed) CHICAGO GREAT WESTERN RAILWAY COMPANY,

By DAVID, KELLOGG & SEVERANCE,

*Its Attorneys, Merchants Nat'l Bank
Bldg., St. Paul, Minn.*

STATE OF MINNESOTA,

County of Ramsey, ss:

A. B. Stickney, being first duly sworn, on oath says that he is an officer of Chicago Great Western Railway Company, to-wit the

President thereof, and that the foregoing answer is true except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

(Signed)

A. B. STICKNEY.

Subscribed and sworn to before me this 19th day of February, 1907.

(Signed)

G. F. CHILLEO,

Notary Public, Ramsey County, Minnesota.

My Commission expires Nov. 18, 1909.

2144

Interstate Commerce Commission.

Filed Jul-8, 1907. Docket No. —.

Docket No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al.

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al.

Answer of the New York Central and Hudson River Railroad Company, answering also as lessee of the Boston and Albany Railroad and the West Shore Railroad, the Rutland Railroad Company, the Lake Shore & Michigan Southern Railway Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Michigan Central Railroad Company, the Chicago, Indiana and Southern Railroad Company, the Indiana Harbor Railroad Company, and the Lake Erie and Western Railroad Company.

I.

Respondents have no knowledge of the several corporations which are stated in Subdivision 1 of said petition to be engaged in business in the city of Kansas City, nor as to the several partnerships also stated therein to be in business in said city, nor as to the several corporations which are therein stated to be in business in the city of St. Joseph and in the city of Omaha, respectively, nor as to the partnerships which are therein stated to be engaged in business in the city of Omaha, and ask that complainants be held to due proof so far as the same may be material.

II.

Respondents have no knowledge as to the business in which the said complainants in said petition are engaged.

2145

III.

Respondents are common carriers, and with their connections are engaged in transporting property from the Atlantic seaboard destined to Kansas City, St. Joseph and Omaha and the cities of

St. Paul and Minneapolis, and are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto. Respondent, the New York Central and Hudson River Railroad Company, alleges that the West Shore Railroad Company and the Boston and Albany Railroad Company are not engaged in interstate transportation and that such interstate transportation as is conducted over their rails is conducted by said respondent as lessee, who, as such lessee, answers in their behalf.

IV.

Respondents deny that they or any of them are parties to what is designated in Subdivision 4 of the petition of the complainants as Western Trunk Line Committee Joint Through Freight Tariff W. T. L. No. 786 I. C. C. No. 678, and amendments thereof, which are alleged to name through rates from the Atlantic seaboard to St. Paul and Minneapolis, subject to the official classification, as per schedule of class rates set forth in Subdivision 4 of the petition.

V.

Respondents deny that there is any arrangement between respondents or any of them and any of the defendant carriers named in the petition of the complainant for the establishment and division of through class rates from the Atlantic seaboard to St. Paul 2146 or Minneapolis; respondents allege that as to shipments of property originating at Atlantic seaboard cities and destined to St. Paul or Minneapolis, respondents, in conjunction with their several connections, receive to Chicago, Illinois, the same rates in cents per hundred pounds as apply upon like traffic originating at the same points of origin and terminating at Chicago, and these respondents are not concerned with the rates or proportional rates charged or accepted by said defendants from Chicago to St. Paul or Minneapolis.

VI.

Respondents deny that they or any of them are parties to what is designated in Subdivision 6 of the petition of the complainants as Western Trunk Line Committee Joint Through Freight Tariff W. T. L. 215 I. C. C. 471, which it is alleged names local rates per hundred pounds from Mississippi River points and Chicago to Kansas City, St. Joseph and Omaha. Respondents further deny that they are parties to any joint through tariff of class rates from the Atlantic seaboard to the said Missouri River cities.

Respondents admit that they participate in joint through class rates from New York to Mississippi River points, from East St. Louis to East Dubuque, Illinois, inclusive, which rates governed by the official classification are: 1st class, 87¢; 2d class, 75¢; 3d class, 58¢; 4th class 41¢; and 5th class, 35¢ per hundred pounds, such rates applying to said Mississippi River points upon all traffic destined to all points west of the Mississippi River and east of Pacific coast terminals, and points taking the same rates.

Respondents further admit that in the division of such joint rates from New York to Mississippi River points as applied to traffic transported via Chicago, with the defendants named in the 2147 petition of the complainants, respondents and their connections east of Chicago receive the proportions set forth in Subdivision 6 of the petition of the complainants, to wit: 1st class, 72.3¢; 2d class, 62.4¢; 3d class, 48.4¢; 4th class, 34.3¢, and 5th class, 29.4¢ per hundred pounds.

VII.

Respondents allege that they are not concerned with the relative distances from New York to Kansas City, St. Joseph, Omaha, St. Paul and Minneapolis, and therefore make no answer to Subdivision 7 of the petition of the complainants.

VIII.

Respondents deny that the joint class rates in which they participate with their connections from Atlantic seaboard cities to Chicago or to said Mississippi River crossings are unreasonable or unjust in and of themselves or as respectively applied to shipments destined to St. Paul or Minneapolis and shipments destined to points west of the Mississippi River.

IX.

For reasons hereinbefore stated, these respondents are not concerned with the allegations contained in the ninth subdivision of the complainants' petition herein, and neither affirm nor deny the same, but call upon complainants to make proof thereof so far as the same may be deemed to be material.

X.

These respondents allege that the rates from New York City to East St. Louis, Illinois, are computed at 116% of the rates 2148 from New York to Chicago according to relative distances, that the rates from New York to East St. Louis are part of a general structure of rates whereby all rates from New York and other eastern points to points in the states of Ohio, Indiana, Illinois, Michigan, Pennsylvania, Kentucky and Wisconsin, and the Province of Ontario are made upon the bases of percentages or the rates from the points of origin to Chicago; that the said rates for the first five classes governed by the official classification from New York to East St. Louis of 87¢, 75¢, 58¢, 41¢, and 35¢ per hundred pounds, respectively, are applied as proportional rates to the various Mississippi River crossings north of East St. Louis to and including East Dubuque, Illinois, and that from other eastern points than New York City the rates to East St. Louis apply equally to said Mississippi River crossings, and all of such rates to said Mississippi River crossings apply uniformly upon all shipments destined to all points west of the Mississippi River and east of Pacific Coast terminals and points taking the same rates. Respondents allege that all of the rates from eastern points to said Mississippi River crossings are

just and reasonable in and of themselves and as applied to shipments destined to any points west of the Mississippi River and east of Pacific coast terminals.

XI.

Respondents have no knowledge of the allegations contained in the eleventh subdivision of complainants' petition.

XII.

Respondents have no knowledge of the allegations contained in the twelfth subdivision of complainants' petition.

2149

XIII.

Respondents allege that the rates from Atlantic seaboard cities to Mississippi River crossings and points east thereof are governed by the official classification which embraces six numbered classes and that the rates from the Mississippi River to Missouri River points are governed by the Western Classification which embraces five numbered and five lettered classes, and it therefore results that innumerable articles are differently classified in such classifications. Respondents further allege that it would be impossible to establish joint through class rates as prayed for by complainants on the basis of \$1.10, 1st class; 94¼¢, 2d class; 72½¢, 3d class; 51½¢, 4th class; and 44¢ per hundred pounds, 5th class, governed by the official classification as applied to the transportation of property from Atlantic seaboard cities to Kansas City, St. Joseph and Omaha or other Missouri River points without simultaneously applying the official classification to all traffic from all eastern points to all points intermediate between the Mississippi and Missouri Rivers and establishing relative joint through class rates governed by such classification from all such eastern points to all such points intermediate between the Mississippi and Missouri Rivers.

The establishment of such joint through class rates to Missouri River points with relative joint through class rates to intermediate points west of the Mississippi River would require a general revision and reduction of the rates from eastern points to points on and east of the Mississippi River in official classification territory, all of which would work great hardship and irreparable injury to these respondents and other interstate carriers not parties to this proceeding.

Respondents allege that the reasonableness of the long
2150 established rates from eastern points to Chicago and Mississippi River crossings is not questioned by complainants herein; that it clearly appears from complainants' petition and from the facts set forth in this answer that the grievance of complainants, if they have any grievance, lies in the rates applied by the defendants named in complainants' petition from Chicago and Mississippi River crossings to Kansas City, St. Joseph and Omaha on shipments originating at eastern points.

Wherefore, respondents pray that no order requiring the establishment of joint through class rates from eastern points to Kansas

City, St. Joseph and Omaha or affecting in any way the existing rates from eastern points to Chicago and Mississippi River crossings, be made, and that these respondents having fully answered be dismissed.

THE NEW YORK CENTRAL AND HUDSON
RIVER RAILROAD COMPANY,
THE RUTLAND RAILROAD COMPANY,
THE LAKE SHORE AND MICHIGAN
SOUTHERN RAILWAY COMPANY,
THE CLEVELAND, CINCINNATI, CHICAGO
AND ST. LOUIS RAILWAY COMPANY,
THE MICHIGAN CENTRAL RAILROAD
COMPANY,
THE CHICAGO, INDIANA AND SOUTHERN
RAILROAD COMPANY,
THE INDIANA HARBOR RAILROAD COM-
PANY,
THE LAKE ERIE AND WESTERN RAIL-
ROAD COMPANY.

By (Signed) R. R. MITCHELL,

General Freight Traffic Manager.

(S'g'd) ALBERT H. HARRIS,

Attorney, Room 417,

Grand Central Station, New York City, N. Y.

2151 Before the Interstate Commerce Commission.

Filed Feb. 28, 1907.

Docket No. 983.

No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS Co., et al.

vs.

CHICAGO, ROCK ISLAND & PACIFIC Ry. Co., CHICAGO, BURLINGTON
& Quincy Ry. Co., Chicago, Milwaukee & St. Paul Ry. Co., Chi-
cago and Northwestern Ry. Co., and Chicago Great Western
Ry. Co.

The answer of the Chicago and Northwestern Railway Company to the foregoing petition:

1. This respondent says that it has no knowledge as to the several corporations which are stated in sub-division one of the said complaint to be engaged in business in the city of Kansas City, nor as to the several partnerships also therein stated to be in business in said city, nor as to the several corporations which are therein stated to be in business in the city of St. Joseph and in the city of Omaha, respectively, nor as to the partnerships which are therein stated to be engaged in business in the city of Omaha, and can neither admit nor deny the statements of said sub-division one in that regard.

2. This respondent says that it has no knowledge as to the business in which the said complainants in said petition are engaged, but it denies that said complainants or any of them are injured because of the matters which are alleged in said petition.

3. It admits that it is a corporation organized and existing under law, and a common carrier engaged in the operation of a steam railroad, and with its connections engaged in transporting 2152 property from the Atlantic sea-board to Kansas City, St. Joseph, and Omaha, and to the cities of St. Paul and Minneapolis, and that it is subject to the provisions of the act to regulate commerce. It also says that the other defendants to this said petition are also railroad corporations and common carriers, and likewise engaged in the transportation of property to said several points, and are each of them subject to the provisions of the said act to regulate commerce.

4. It admits that the said cities of Kansas City, St. Joseph and Omaha are each located upon all of the said different roads, and reached by their several lines, except that this defendant does not reach with its lines the cities of St. Joseph and Kansas City, and the Chicago, Milwaukee & St. Paul Railway Company does not reach with its lines the city of St. Joseph.

It admits that it and all of the defendants are parties to the Western Trunk Line Committee joint through freight tariff W. T. L. No. 786, I. C. C. No. 678, and amendments thereof, naming through rates from the Atlantic sea-board to St. Paul and Minneapolis, but as to whether Exhibit A to said petition is a correct copy of said freight tariff and amendments thereof, this respondent cannot state, as no such exhibit has been attached to the copy of the said petition served upon it herein. It admits however that the New York all-rail rates to St. Paul and Minneapolis via standard lines subject to official classification are as named in said sub-division four of said complaint for the first five classes of freight respectively, and that the table of rates which is set forth in said sub-division four correctly states the all-rail rates in effect from New York to St. Paul and Minneapolis.

2153 5. It admits that in the division of the said through rates the eastern connections of this defendant receive the portions of said rates as stated in said sub-division five, and that this defendant receives as its proportion of said through rates upon said five classes the sums therein stated respectively.

6. It admits that it and the other defendants to said petition are parties to the western trunk line committee joint through tariff W. T. L. No. 215, I. C. C. No. 471, but it says that no Exhibit B to said petition has been served upon it, and it therefore cannot state whether such exhibit correctly sets forth and is a correct copy of said freight tariff.

It admits that the rates on the first five classes subject to western classification from Mississippi River points and Chicago to Kansas City, St. Joseph, and Omaha, are as stated in the table set out in said sub-division six.

It admits that the standard all-rail through rates from New York

to Kansas City, St. Joseph, and Omaha are as stated in said sub-division six, and that said through rates from New York to Kansas City, St. Joseph and Omaha are made up of the combination of rates from New York to Mississippi River points and rates from Mississippi River points to said Kansas City, St. Joseph and Omaha.

It admits that in the division of the through rates from the Atlantic sea-board to Kansas City, St. Joseph and Omaha this defendant receives as its portion of said through rates on the said five classes the said sums respectively which are stated in said sub-division six.

7. It admits that the distances from New York to St. Paul and Minneapolis, and to Omaha, St. Joseph, and Kansas City are, via the several railways which are therein named, as stated in the table set out in sub-division seven.

2154 8. It denies that the rates charged and the classification enforced by this defendant jointly with its connecting lines for the transportation of property from the Atlantic sea-board and other eastern producing territory to Kansas City, St. Joseph, and Omaha are in themselves unreasonable, and that they are relatively unjust and unfair and prejudicial as compared with rates from the same territory to St. Paul and Minneapolis, and it denies that the volume of traffic, territory traversed, cost of operation and maintenance, railroad property values, and services involved in the handling of traffic from the Atlantic sea-board to Missouri River points and to Minneapolis and St. Paul are substantially the same. It denies that the said complainants are subjected to undue discrimination, prejudice, and disadvantage, and it denies that the rates from the sea-board to Kansas City, St. Joseph, and Omaha are in violation of the act to regulate commerce with the amendments and supplements thereto, as is charged in sub-division eight.

9. As to sub-division nine of said complaint it says that the same is so uncertain and indefinite that this defendant is not able to make answer thereunto, and is not advised as to what if anything the complainants intend to assert and charge therein.

10. It denies the several matters and averments stated in sub-division ten of said complaint, and each and every thereof, and it denies that the rates which are suggested by said complainants as reasonable and just rates from the Atlantic sea-board to the said Missouri River cities would be reasonable or just, and would pay for all operating expenses, maintenance, and a fair profit on the value of the property owned by the defendants to said petition, employed in the transportation of such freight, and it denies that the through
2155 rates charged from the Atlantic sea-board to the said Missouri River cities for said five classes of freight are unjust, unreasonable, excessive, or discriminatory against or prejudicial to the said complainants, and it denies that the sums which are received by this defendant or by the other defendants in the division of the said through rates from the Atlantic sea-board to said Missouri River cities are excessive, unjust, or unreasonable, and that they are unjustly discriminatory against or prejudicial to the said complainants.

11. It denies that the rates which are complained of in said petition are the result of any agreement of the defendants thereto, and

it denies the matters which are stated in subdivision 11 of said complaint.

12. It denies the allegations of sub-division 12 of said complaint, and each and every of the matters which are therein stated.

13. Further answering said petition this defendant alleges that the rates on said five classes from the Atlantic sea-board to St. Paul and Minneapolis are necessarily lower than the rates on said classes from the Atlantic sea-board to the said three Missouri River cities, because of the competition at Duluth, St. Paul, and Minneapolis with the lake and water lines reaching Duluth, St. Paul, and Minneapolis via the Great Lakes, and because of other controlling competitive conditions existing at those points over which this defendant has no control, including the competition at those points with Canadian lines. That in order to meet such competition at Duluth, St. Paul, and Minneapolis, the all-rail lines from New York have been compelled to put in effect rates which are unduly low, and which are lower than the rates from New York to the Missouri River

2156 points, but that it is impossible for this defendant and the other railroads to secure rates that are adequately high in competition with the said lake and rail lines, and with the competing Canadian lines, and that the said competition which exists at Duluth, St. Paul, and Minneapolis is solely responsible for the low rates which are and have been prevailing between New York and said points, but that said competition is not effective at said Missouri River points, and that the conditions existing at Duluth, St. Paul, and Minneapolis in that respect are wholly different from the conditions existing at Kansas City, St. Joseph, and Omaha.

This defendant further alleges that the tariff rates from New York and the Atlantic sea-board to Kansas City, St. Joseph and Omaha and from Mississippi River points to Kansas City, St. Joseph and Omaha which are mentioned in said complaint are fair and are reasonable; that none of them are unduly high or excessive, and that the said rates do not unreasonably or in any way discriminate against Kansas City, St. Joseph, and Omaha, or the merchants or other persons doing business at said places. And this defendant denies each and every allegation, matter and thing in said petition contained not hereinbefore admitted or answered unto.

CHICAGO AND NORTHWESTERN
RAILWAY COMPANY,

By (Signed) H. R. McCULLOUGH,

Vice-President.

(Signed) S. A. LYNDE, *Attorney.*

2157 Before the Interstate Commerce Commission.

Filed Mar. 7, 1907.

Docket No. 983.

No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY, a Corporation,
et al.,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

*Answer of the Chicago, Burlington & Quincy Railway Company,
One of the Defendants to the Petition Herein.*

This defendant, answering, denies that the rates charged and classifications enforced by it, as set forth in said petition for the transportation of property from the Atlantic Seaboard and other eastern producing territory to Kansas City, St. Joseph and Omaha, are in themselves unreasonable, or that they are relatively unjust, unfair and prejudicial to complainants as compared with rates from the same territory to St. Paul and Minneapolis.

It also denies that the volume of traffic, the territory traversed, the cost of operation and maintenance, railroad property values and services, involved in handling the traffic from the Atlantic Seaboard to Missouri River points, and to Minneapolis and St. Paul are substantially the same; and denies that complainants are subjected to any undue discrimination, prejudice or disadvantage by reason of said rates, or that said rates to Kansas City, St. Joseph and Omaha are in violation of the Act to Regulate Commerce with the Amendments and supplements thereto.

2158 This defendant further states that if it has charged or does charge per ton per mile rates for the transportation of freight from the Atlantic Seaboard Westward through the cities of Kansas City, St. Joseph and Omaha, to be delivered to persons other than complainants at points of destination west from said cities of Kansas City, St. Joseph and Omaha, that are less than the per ton per mile rates charged to these complainants, it is fully justified in so doing on the principle well recognized by this Honorable Commission, that the longer the haul, under similar circumstances and conditions, the less should be the rate per ton per mile;

But this defendant denies that by reason of said per ton per mile rates or otherwise, it has unjustly discriminated against these complainants or any of them; for that it further states that rates to the Pacific Coast, through said cities of Kansas City, St. Joseph and Omaha, are controlled, established and fixed by water competition, over which this defendant has no control, and that this defendant in order to participate in traffic to Pacific Coast points, which traffic is of great volume and importance and value, and upon which

traffic this defendant is enabled to make some profit, has been obliged to make said per ton per mile rates to said Pacific Coast points, less than the per ton per mile rates enjoyed by these complainants.

This defendant denies all the allegations contained in Paragraph Ten of said complaint.

This defendant further denies that the rates complained of herein are the result of an agreement of the defendant roads made between themselves; and further denies that said rates are the ultimate result of any unlawful combination and conspiracy at any time entered into by this defendant with any other railroad companies whatsoever, or that this defendant has at any time conspired or unlawfully confederated with any railroads whatsoever to maintain any rates whatsoever to said Missouri River cities or otherwise; or that it has threatened any of the defendants herein that if said through rates to the said Missouri River cities were reduced, this defendant would treat said reducing companies in any unfriendly manner, or refuse to treat them as friendly connections, or refuse to route goods over their line, or in any way to strive to injure and destroy their business; and denies that by reason of anything set down or agreed to by this defendant, or that as the result of any threats or coercion on the part of this defendant, the Chicago Great Western Railway or the Chicago, Milwaukee & St. Paul Railway Company entered into any agreement to maintain any unjust or unfair rates, or the rates herein complained of.

This defendant further denies that by reason of anything set forth in said complaint or otherwise, it has maintained any excessive or unlawful rates to the said Missouri River cities; but asserts that the rates in force and complained of are just and reasonable; and denies that by reason of said rates or otherwise, it has in any wise unjustly discriminated against said Missouri River cities, or against these complainants or any of them, or against any kind of traffic; or that it has given any undue or unreasonable advantage over these complainants in said Missouri River cities to any persons or localities, or kinds of traffic whatsoever; and denies that any of the complainants, by reason of said rates or by reason of anything contained in said complaint, have been in any way injured.

Wherefore, this defendant prays to be hence dismissed.

CHICAGO, BURLINGTON & QUINCY
RAILWAY COMPANY,

By (Signed) GEO. H. CROSBY,

Freight Traffic Manager.

(Signed) CHESTER M. DAWES,

General Solicitor.

I hereby certify, that I have this day mailed copy of above answer to the complainants herein, by depositing said in U. S. Mail, postage paid, addressed to W. P. Trickett, Authorized Agent of complainants, at Kansas City, Missouri.

(Signed)

CHESTER M. DAWES,

General Solicitor.

Chicago, Illinois, March 4, 1907.

2161 Before the Interstate Commerce Commission.

Filed Mar. 4, 1907.

Docket No. 983.

Docket No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS Co. et al.

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al.

Separate Answer of the Chicago, Rock Island & Pacific Railway Co.

The Chicago, Rock Island & Pacific Railway Company, for its separate answer to the complaint herein, states:

I.

It has no knowledge or information sufficient to form a belief as to whether all of the statements contained in paragraph 1 of the petition are true or not, and therefore denies the same.

II.

It supposes that the complainants are all engaged in either the mercantile or manufacturing business, and in buying and selling various commodities shipped from the Atlantic seaboard to them respectively, under the different freight classifications mentioned, but denies that each of them is greatly and irreparably injured by the things complained of.

III.

It admits that it is a common carrier.

IV.

It admits the allegations contained in paragraph 4 of the petition, except that Exhibit "A" was not attached to the complaint served upon this defendant, and it does not know whether it is a correct copy of the Western Trunk Line Committee Joint Through Tariff mentioned.

2162

V.

It admits the allegations of paragraph 5 of complainants' petition.

VI.

It admits that it is a party to the Western Trunk Line Committee Joint Through Tariff No. 215, I. C. C. No. 471, but does not know whether Exhibit "B" referred to is a correct copy of the same, as said Exhibit was not attached to the complaint served upon this defendant.

VII.

It admits that the statements in paragraph 7 are correct.

VIII.

It denies that the rates charged and classification enforced by defendant for the transportation of property from the Atlantic Seaboard and other eastern producing territory to Kansas, St. Joseph and Omaha are in themselves unreasonable and relatively unjust, unfair and prejudicial as compared with the rates from the same territory to St. Paul and Minneapolis. It denies that the volume of traffic, territory traversed, cost of operation and maintenance, railroad property values and services that are involved in the handling of traffic from the Atlantic seaboard to Missouri River points and to Minneapolis and St. Paul are substantially the same; denies that complainants are subjected to undue discrimination, prejudice and disadvantage and that said rates to Kansas City, St. Joseph and Omaha are therefore in violation of the act to regulate commerce with amendments and supplements thereto.

IX.

This defendant says that the allegations of Paragraph 9 of the complaint are too vague and indefinite to advise this defendant just what rates are referred to therein, and therefore denies each allegation of said paragraph.

2163

X.

This defendant denies that the rates mentioned in paragraph 10 from the Atlantic seaboard to the three Missouri River points aforesaid are reasonable and just rates and will pay for all operating expenses, maintenance and a fair profit on the fair value of the property owned by this defendant employed in transporting freight from the Atlantic seaboard to Omaha, St. Joseph and Kansas City.

It denies that the through rates charged from the Atlantic seaboard to said three cities of Omaha, St. Joseph and Kansas City, to wit \$1.47, \$1.20, 93c., 68c., and 57c. per hundred pounds for the five classes of freight matter respectively, are unjust, unreasonable, excessive and discriminatory against, and prejudicial to complainants and each of them, and that the same sums charged, accepted and retained by the defendant companies respectively on said through rates from the Atlantic seaboard via Mississippi River, as set forth in said petition, are excessive, unjust, unreasonable, in and of themselves because said sums and rates are higher and greater than are reasonably necessary to pay the cost of transportation and maintenance, and a fair profit on a fair valuation of the property of the defendant companies employed in transporting freight between said points, and are unjustly discriminatory against and prejudicial to the complainants and each of them.

XI.

It denies the allegation of paragraph 11 of the complaint.

XII.

It denies specifically the allegations of paragraph 12 of the complaint.

XIII.

It denies that the rates now charged are unjust, unreasonable, excessive, prejudicial and discriminatory, and denies that the petitioners are entitled to the relief prayed for on any part thereof.

2164

XIV.

Further answering said petition, defendant alleges that the rates to St. Paul and Minneapolis are necessarily unduly low by reason of the competition of the said all rail lines with the lake and water lines via the Great Lakes and other competitive conditions, over which this defendant has no control; that the rates by said lake and water lines are much lower than the said all rail rates from New York to St. Paul and Minneapolis set forth in said petition, and that it is impossible for this defendant and the other railroads to secure rates that are adequately high in competition with the said lake and rail lines and other competing lines, and that said competition is sole- responsible for the lower rates prevailing between New York, and St. Paul and Minneapolis, and that said competition is not effective as against all rail lines to Missouri River points.

This defendant further alleges that the tariff rates from New York and all other points to Kansas City, St. Joseph and Omaha are fair and low, and that none of them is unduly high, and that the said rates do neither unduly nor in any way discriminate against the said cities of Kansas City, St. Joseph and Omaha, or the merchants or other persons doing business at said places; and this defendant denies each and every allegation, matter and thing in the said petition contained not hereinbefore admitted or answered unto.

Wherefore defendant asks to be dismissed.

THE CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COMPANY,

(Signed)

By E. B. PEIRCE, *Its Solicitor.*

2165 Before the Interstate Commerce Commission.

Filed May 29, 1907.

Docket No. 983.

Docket No. 983.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al.

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al.

Amendment to Answer of Chicago & North Western Railway Company to the Complaint in the Said Proceeding.

And said Chicago & North Western Railway Company, respondent in the above entitled proceeding, by leave hereby amends its answer to the petition in said proceeding by inserting as an additional paragraph to said answer the following, viz:

14. This defendant further shows that the said complaint relates wholly to through rates from New York and the Atlantic Seaboard to Kansas City, St. Joseph and Omaha and is in substance that such through rates to said Missouri River points are unreasonable, unjust, unfair and prejudicial as compared with through rates from the same territory to St. Paul and Minneapolis, and that such through rates are unreasonable and excessive in and of themselves.

That said through rates which are made the subject of complaint in said proceeding have been established and put in force and effect and are now maintained by virtue of joint traffic agreements between this respondent and the several Railroad Companies 2166 which are hereafter named, and that said through rates are joint rates which have been duly published, filed and posted by the several Railroad Companies which are parties thereto, which said several Railroad Companies are as follows:

Baltimore & Ohio R. R.
Baltimore & Ohio Southwestern R. R. Co.
Baltimore Steam Packet Co.
Bangor & Aroostock R. R.
Boston & Albany R. R.
Boston & Maine R. R.
Boston & Philadelphia Steamship Co.
Buffalo & Susquehanna Ry.
Buffalo, Rochester & Pittsburgh Ry.
Central R. R. of New Jersey.
Central Vermont Ry.
Chesapeake Steamship Co.
Chicago, Indianapolis & Louisville Ry.
Chicago, Indiana & Southern R. R.
Chicago Junction Ry.
Cincinnati, Hamilton & Dayton Ry.
Cleveland, Akron & Columbus Ry.

Cleveland, Cincinnati, Chicago & St. Louis Ry.
 Clyde Steamship Co.
 Cumberland Valley R. R.
 Delaware & Hudson Co.
 Delaware, Lackawanna & Western R. R.
 Elgin, Joliet & Eastern Ry.
 Erie Railroad.
 Grand Trunk Ry. System.
 Hocking Valley Ry. Co.
 Indiana Harbour R. R.
 Lake Erie & Western R. R.
 Lake Shore & Michigan Southern Ry.
 Lehigh Valley Railroad.
 Main Central R. R.
 Merchants & Miners Transportation Co.
 Michigan Central R. R.
 New York Central & Hudson River R. R.
 New York, Chicago & St. Louis R. R. Co.
 New York, New Haven & Hartford R. R.
 New York, Ontario & Western Ry.
 New York, Philadelphia & Norfolk R. R.
 New York, Susquehanna & Western R. R.
 Norfolk & Western Ry.
 Ohio Central Lines.
 Old Dominion Steamship Co.
 Pennsylvania Co.
 Pennsylvania R. R.
 Pere Marquette R. R.
 Philadelphia & Reading Ry.
 Philadelphia, Baltimore & Washington Ry.
 Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co.
 Pittsburg, Fort Wayne & Chicago R. R.
 2167 Rutland R. R.
 Seaboard Air Line Ry.
 Southern Ry.
 Toledo, Peoria & Western Ry.
 Toledo, St. Louis & Western R. R.
 Vandalia R. R.
 Wabash R. R. Co.
 Western Maryland R. R.
 West Shore R. R.
 Wheeling & Lake Erie R. R.
 That the said several Railroad Companies who are as above stated parties to said joint traffic agreements under which said through rates, which are the subject of complaint in said proceeding, have been established and put in effect and are now being maintained, are necessary parties to said proceeding and should be made parties respondent thereto.

CHICAGO & NORTH WESTERN
RAILWAY CO.,

By (Signed) H. R. McCULLOUGH, *Vice-President.*

(Signed) S. A. LYNDE, *Attorney.*

	Standard all rail rates.					25% reduction.					Rates obtained using same differentials, less the proposed rates to Mo. Riv. p'ts, between New York & other p'ts on West bound traffic.										Differential used to obtain rates shown in next column.				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
						Actual % reductions.																			
						25	21	22	25	23															
New York, N. Y.	147	120	93	68	57	110	95½	72½	51½	44															
Boston, Mass.																									
Providence, R. I.																									
Hartford, Conn.																									
Philadelphia, Pa.	141	114	91	66	55	106	85½	68	49½	41	104	89½	70½	49½	42	6	6	2	2	2	2	2	2	2	2
Baltimore, Md.	139	112	90	65	54	104	84	67½	48½	40½	102	87½	69½	48½	41	8	8	3	3	3	3	3	3	3	3
Albany, N. Y.	132	107	83	61	51	99	80	62	46	38	95	82½	62½	44½	38	15	13	10	7	6					
Utica, N. Y.																									
Binghamton, N. Y.																									
Corning, "																									
Elmira, "																									
Cortland, "																									
Ithaca, "																									
Harvestville, "																									
Rochester, "																									
Syracuse, "																									
Wayland, "																									
Buffalo, N. Y.	115½	93½	72	53	44½	87	69	54	40	33½	78½	68½	51½	36½	31½	31½	26½	21	15	12½					
Cleveland, Ohio.	111½	89½	68	50	41½	84	66	51	37½	30	74½	64½	47½	33½	29½	35½	30½	25	18	15½					
Toledo, Ohio.																									
Detroit, Mich.	105	84	65	48	40	79	63	49	36	30	68	59½	44½	31½	27	42	36	28	20	17					
Sandusky, Ohio.	107	86	66	49½	41	81	64½	39½	37½	31	70	61½	45½	32½	28	40	34	27	18½	16					

Reg. T Line Dif. now in effect on basis 1.47 rate to K. C. and 75c. rate to Chic.

This is rates obtained by deducting present TL Dif. from 110 basis to K. C.

Present standard basis to K. C. Rates from Interior T L p'ts on basis 25% reduction.

2169

From Atlantic Seaboard, etc.

	Rates to Minneapolis, St. Paul, etc.					Rates to Missouri River points.									
	Standard all rail.					Differential lines.					Standard all rail.				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Portland, Me.....	115	99	76	53	46	110	95	73	51	44	147	120	93	68	57
Boston, Mass.....											<i>*110</i>	<i>96½</i>	<i>72½</i>	<i>51½</i>	<i>44</i>
Providence, R. I.....	115	99	76	53	46	105	91	70	49	42	147	120	93	68	57
Hartford, Conn.....											<i>110</i>	<i>96½</i>	<i>72½</i>	<i>51½</i>	<i>44</i>
New York, N. Y.....															
Philadelphia, Pa.....	109	93	74	51	44	101	87	70	48	42	141	114	91	68	55
Baltimore, Md.....	107	91	73	50	43	99	85	69	47	41	<i>106</i>	<i>86½</i>	<i>68½</i>	<i>49½</i>	<i>41</i>
Albany, Troy, Schenectady, Utica, Richland, N. Y.....	100	86	66	46	40	..	..	..	..	..	132	107	83	61	51
Binghamton, Corning, Elmira, Cortland, Ithaca, Hornellsville, Mt. Norria, Rochester, Syracuse, Wayland, N. Y.....	95	80	61	43	37	..	..	..	..	..	<i>99</i>	<i>80</i>	<i>62</i>	<i>46</i>	<i>38</i>
Ogdensburg, N. Y.....	105	91	70	49	42	..	..	..	..	..	121	98	76	56	47
Burlington-Rutland p'ts, Montreal, Que.....	105	91	70	49	42	..	..	..	..	..	<i>91</i>	<i>73½</i>	<i>57</i>	<i>42</i>	<i>36</i>
Peterboro, Ont.....	98	84	65	46	40										
Quebec, Que.....	115	97	75	54	47										
Sherbrooke, Que.....	105	91	70	49	42										
Virginia Com. P'ts.....	99	85	69	47	41										

*Note.—Red ink figures [indicated by italics] are 25% red. of above rated to Mo. Riv. p'ts.

2170

EXHIBIT B.

I. C. C. Docket No. 983.

Equalization of Rates from New York, etc., to Kansas City, etc., Versus Minneapolis.

Assuming that the rates on basis of New York and Boston to Chicago $\frac{1}{75} \frac{2}{65} \frac{3}{50} \frac{4}{35} \frac{5}{30}$ and to St. Louis $\frac{1}{87} \frac{2}{75} \frac{3}{58} \frac{4}{41} \frac{5}{35}$ are not unreasonable, then the proposed reduction must come out of the rates of the lines west of the Mississippi River.

As the rates to St. Louis from New York are equitable and the reduction proposed to Kas. City is on a scale of $\frac{1}{110} \frac{2}{95\frac{1}{4}} \frac{3}{72\frac{1}{4}} \frac{4}{51\frac{1}{4}} \frac{5}{44}$, the proper adjustment then west of the Mississippi River would be the difference between the rates from New York to St. Louis and proposed thru rate to Kas. City, which is $\frac{1}{23} \frac{2}{20\frac{1}{4}} \frac{3}{14\frac{1}{4}} \frac{4}{10\frac{1}{4}} \frac{5}{9}$.

Division of Rates.

If the rates from New York and Boston to Kansas City are to be made on the same rate basis per mile as from New York to Chicago, then it follows that the proper division of rates from New York to Kansas City would be as follows:

New York to Kansas City.

(Proposed Through Rates.)

1	2	3	4	5
1.10	95 $\frac{1}{4}$	72 $\frac{1}{4}$	51 $\frac{1}{4}$	44

Divisions on Chicago.							Divisions on St. Louis.						
Per cent.	Miles.	1	2	3	4	5	Per cent.	Miles.	1	2	3	4	5
East. 66.6	912	73.26	63.44	48.12	34.13	29.30	East. 79.1	1058	87.01	75.34	57.15	40.54	34.8
West. 33.4	458	36.74	31.81	24.13	17.12	14.70	West. 20.9	280	22.99	19.91	15.10	10.71	9.2
100%	1370	110	95½	72½	51½	44	100%	1338	110	95½	72½	51½	44

New York to Omaha.

(Proposed Through rate.)

1	2	3	4	5
1.10	95	72	51	44

Divisions on Chicago.							Divisions on St. Louis.						
Per cent.	Miles.	1	2	3	4	5	Per cent.	Miles.	1	2	3	4	5
East. 64.59	912	71.05	61.52	46.67	33.10	28.42	East. 71.97	1058	79.17	68.55	52	37.88	31.67
West. 35.41	500	38.95	33.73	25.58	18.15	15.58	West. 28.03	412	30.83	26.70	20.25	14.37	12.33
100%	1412	110	95½	72½	51½	44	100%	1470	110	95½	72½	51½	44

EXHIBIT No. 1. McGeen, I. C. C. Docket 983.

2171

Commodity.	Pcs. case or bale.	Est. wt. case.	Wt. bale.	No. cases car.	Wt. per car.	N. Y. Seaboard to St. Paul, per car.		N. Y. Seaboard to Mo. Riv., per car.		Miss. River frt., inc. value case.	Mo. River frt., inc. value case.	Miss. River frt., inc. value car.	Mo. River frt., inc. value car.
						Rate.	Frt. car.	Rate.	Frt. car.				
Hats.....	3 Doz. per case...	75	...	80	6000	1.15	69.00	1.47	\$88.20	\$25.00	\$25.24	\$2000.00	\$2019.20
Calico, Gingham.....	50 Pcs. " " "	350	...	80	28000	"	322.00	"	411.60	130.00	131.12	10400.00	10489.60
Sh't'g, Tick'g, Duck..	46 " " "	450	...	30	13500	"	155.25	"	198.45	125.00	126.44	3750.00	3793.20
Flannels.....	35 " " "	400	...	25	10000	"	115.00	"	147.00	102.00	103.28	2550.00	2582.00
Blankets, Cot.....	75 Pr. " " "	400	...	25	10000	"	115.00	"	147.00	60.00	61.28	1500.00	1532.00
" Wool.....	50 " " "	350	...	25	8750	"	100.63	"	128.63	150.00	151.12	3750.00	3778.00
Lace Curtains.....	100 " " "	150	...	80	12000	"	138.00	"	176.40	125.00	125.48	10000.00	10038.40
Embroideries.....	100 Pcs. " " "	200	...	200	40000	"	460.00	"	588.00	202.00	202.64	40000.00	40528.00
Underw'r, Summ'r....	24 Doz. Suits " " "	350	...	30	6000	"	69.00	"	88.20	150.00	150.64	4500.00	4519.20
" Winter....	24 " " "	350	...	30	10500	"	120.75	"	154.35	215.00	216.12	6450.00	6483.60
Hosiery.....	60 " Pr. " " "	150	...	50	7500	"	86.25	"	110.25	75.00	75.48	3750.00	3774.00
Boots & Shoes.....	1to3 " " "	50	...	250	12500	"	143.75	"	183.75	24.00	24.16	6000.00	6040.00
Rubber Goods.....	2 " " "	35	...	560	19600	"	225.40	"	288.12	20.00	20.11	11200.00	11261.60
Denims, Duck Sheet'g.	25 Pcs. per Bale...	...	300	100	30000	"	345.00	"	441.00	90.00	90.96	9000.00	9096.00

Rates from Chgo. to Minneapolis on Distance Basis of 410 Mi.

	1	2	3	4	5
Present rates	60	50	40	25	20
Rates per mile.....	.00146	.00122	.00091	.00061	.00049

Using the above distance basis per mile to equalize Kas. City vs. M'p'ls to Chgo. distance 458 miles.

	1	2	3	4	5
On Minnpls mileage basis.....	.67	.56	42	28	22
Present rate to Kas. City.....	80	65	45	32	27

Exhibit I.

H. C. Barlow. I. C. C. Docket No. 983.

Exhibit 1 to Martin's Testimony.

M. St. P. & S. Ste. M. I. S. C. C. No. 163.

Amendment No. 1 to

M. St. P. & S. Ste. M. G. F. D. No. 2055.

Amendment 2 to

D. S. S. & A. G. F. D. # 864

Minneapolis, St. Paul & Sault Ste. Marie Ry..Duluth, South Shore
& Atlantic Ry.

*Proportional Tariff on Traffic Originating South of Ogdensburg,
N. Y., and East of Newport, Vt., when Routed via Sault Ste. Marie,
and on Traffic Originating at and East of Buffalo, Pittsburg, etc.,
when Routed via Mackinaw City.*

Taking Effect January 25, 1897.

From Mackinaw City and Sault Ste. Marie, Mich., to Minneapolis,
St. Paul and Shoreham, Minn.

Rates in cents per 100 lbs. governed by official classification:

1	2	3	4	5	6
40	34	26	18	16	13

Clayed bagging, carloads, 25 cents.

Agents are strictly prohibited from quoting or using a higher rate for a shorter than for a longer distance over the same line, in the same direction, the shorter being entirely included within the longer distance.

WM. ORR,
General Freight Agent,
D. S. S. & A. Ry., Duluth, Minn.

W. L. MARTIN,
General Freight Agent,
M. St. P. & S. Ste. M. Ry., Minneapolis, Minn.

Issued Jan. 18, 1897. (300)

2174 I. C. C. DOCKET No. 983.

H. E. White Exhibit 2.

KANSAS CITY, ST. JOSEPH AND OMAHA
versus
MINNEAPOLIS AND ST. PAUL.

To Rapid City, S. D.

		1	2	3	4	5
Mplis. & St. Paul C. & N.						
W.	594 miles	177	154½	126	102.5	83
Omaha C. & N. W....	552 miles	130	107	92	77	63
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		42	57	47½	34	25.5
						20

Twin City Mileage.....107% of Omaha....Rate 147%
Omaha Mileage 93% of Twin City...Rate 68%
Twin City Terminal basis.....137% of Omaha....Rate
Omaha Terminal basis 73% of Twin City...Rate

		1	2	3	4	5
Mplis. & Paul C. & N.						
W.	594 miles	177	154.5	126	102.5	83
St. Joseph C. B. & I...	688.9 miles	130	117	102	87	68
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		99.4	47	37.5	24	15.5
						15

Twin City Mileage..... 86% of St. Joseph...Rate 136%
St. Joseph Mileage..... 116% of Twin City...Rate 73%
St. Joseph Terminal basis..... 63% of Twin City...Rate
Twin City Terminal basis.....158% of St. Joseph...

Mplis. St. Paul C. & N.						
W.	594 miles	177	154.5	126	102.5	80
Kansas City C. B. & I.	708.9 miles	149	132	113	96	72
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		114.9	28	22.5	13	6.5
						12

Twin City Mileage.....	119% of Kansas City..	Rate 84%
Kansas City Mileage.....	84% of Twin City...	Rate 119%
Kansas City Terminal basis.....	70% of Twin City...	Rate
Twin City Terminal basis.....	141% of Kansas City..	Rate

2175

I. C. C. DOCKET No. 983.

Complaint Exhibit # 1.

Before Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Plaintiffs,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Joint Freight tariff W. T. L. No. 209, taking effect April 28, 1908, and amendment thereto No. 6, taking effect July 8th, 1907, makes a rate from New York to St. Paul and Minneapolis of—

115	99	76	53	46
-----	----	----	----	----

The same tariff sheet gives the same rate to Missouri River crossings, which includes Omaha, St. Joseph and Kansas City, on goods destined to Montana common points and Spokane, Washington, and common points, whereas the railroads from Chicago to the Missouri River do carry freight passing through Omaha, St. Joseph and Kansas City destined to the northwest territory on the same rates as carried to St. Paul, why cannot the same roads carry freight at the same rate, towit:

115	99	76	53	46
-----	----	----	----	----

When the point of destination is at Omaha, St. Joseph or Kansas City? Why make the discrimination in favor of freight which reaches Montana common points and Spokane, Washington, and common points?

2176

JOINT FREIGHT TARIFF W. T. L. No. 209.

Joint freight tariff W. Y. L. No. 209, taking effect April 28th, 1906, and Amendment No. 6, taking effect July 8th, 1907, gives a rate from New York to St. Paul and Minneapolis—

115	99	76	53	46
-----	----	----	----	----

The same tariff sheets provide for the same rate to Missouri River crossings, towit:

115	99	76	53	46
-----	----	----	----	----

on freight destined to Montana common points, and Spokane, Washington, common points.

The through rates to Montana common points and Spokane, Washington, and common points, are fixed by adding the rates from Omaha, St. Joseph and Kansas City to Montana common points, and Spokane, Washington, common points to the rates

115	99	76	53	46
-----	----	----	----	----

The result is that the western railroads from Chicago to Missouri River points accept the same rate as charged from Chicago to St. Paul and Minneapolis on freight which will pass through Omaha, St. Joseph or Kansas City if destined to Montana common points or Spokane, Washington, and common points.

2177 There are three manifest results from this tariff sheet.

First. The railroads west of Chicago can and do carry certain freight to Omaha, St. Joseph and Kansas City for the same rate as to St. Paul and Minneapolis on condition only that the goods shall be destined for Montana common points and Spokane, Washington, common points.

Second. Manifestly said rates are compensatory, otherwise the railroads would not solicit this business and carry the same through Omaha, St. Joseph or Kansas City.

Third. This tariff sheet gives St. Paul and Minneapolis advantage over, and is a discrimination against Omaha, St. Joseph and Kansas City as to all the northwest territory for the reason that St. Paul and Minneapolis reach all of said territory by adding the local rates west from St. Paul and Minneapolis to the rate from New York to St. Paul and Minneapolis, to wit:

115	99	76	53	46
-----	----	----	----	----

whereas, if the goods are consigned to jobbers at Omaha, St. Joseph or Kansas City, the rate is—

147	120	93	68	57
-----	-----	----	----	----

Omaha, St. Joseph and Kansas City jobbers cannot ship their goods into the northwest territory, to wit: Montana common points and Spokane, Washington, common points without adding the local rates from Omaha, St. Joseph and Kansas City to said points to the said rates above mentioned, to wit:

147	120	93	68	57
-----	-----	----	----	----

2178

I. C. C. DOCKET No. 983.

Before Interstate Commerce Commission.

Complaint # 3.†

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Plaintiffs,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Tables based on the answer of the New York Central showing that the railroads west of Chicago and between Chicago and Mississippi River points carry freight at a less rate per mile than the plaintiffs pray for in their petition. The conditions between Chicago and Mississippi River points are substantially the same as between Mississippi and Missouri River points.

2179 The 6th paragraph of the answer of the New York Central admits a joint tariff rate from New York to Mississippi River points from East Dubuque on the north and East St. Louis on the south, as follows:

Classes	1	2	3	4	5
Rates per cwt.....	87	75	58	41	35

The said answer of the New York Central admits that of the division of the rates supra, it receives the following:

1	2	3	4	5
72.3	62.4	48.4	34.3	29.4

This leaves the proportions earned on the western roads from Chicago to the said Mississippi River points to be:

1	2	3	4	5
14.7	12.6	9.6	6.7	5.6

On the basis of the admissions in the 6th paragraph of the answer of the New York Central, rates from Chicago to the Missouri River points, Omaha, St. Joseph and Kansas City, figured on a short line competition, would be—

2180	1	2	3	4	5
	38.5	33	25.2	17.6	14.7

Figured on the same basis from Mississippi to Missouri River as between Chicago and the Mississippi River, the through rate from New York to Omaha, St. Joseph and Kansas City would be—

[† In pencil in copy.]

1	2	3	4	5
75	65	50	35	30
38.5	33	25.2	17.6	14.7
<hr/> 113.5	<hr/> 98	<hr/> 75.2	<hr/> 52.6	<hr/> 44.7

The above is a fraction less than prayed for by the plaintiffs and a fraction less than the St. Paul rates,

115	99	84	76	61
-----	----	----	----	----

By the above answer of the New York Central it appears that the rate from New York to Mississippi River points

1	2	3	4	5
87	75	58	41	35

applies to all traffic destined to all points west of the Mississippi River and east of Pacific Coast terminals, and therefore includes shipments from New York to Omaha, St. Joseph and Kansas City.

If the western roads carry said freight from Chicago to Mississippi River points, an average distance of 180 miles, for the following rates:

1	2	3	4	5
14.7	12.6	9.6	6.7	5.6

2181 how can they justify the charge from Chicago to Missouri River points, Omaha, St. Joseph and Kansas City, an average of 472 miles of—

1	2	3	4	5
74.7	57.6	44.6	33.7	27.6

There are no conditions between the Mississippi and Missouri Rivers to justify such increase or disproportion in rates.

To show that the average distance from Chicago to Mississippi River points, covered by the answer of the New York Central, by short line routes, is 180 miles see following table of distances:

To—

East Dubuque, (C. G. W.)	165	miles
Savanna, (C. M. & St. P.)	138	"
East Clinton, (C. & N. W.)	136	"
Rock Island, (C. R. I. & P.)	181	"
E. Burlington, (C. B. & Q.)	203	"
Alton, (C. & A.)	257	"
Average distance	180	"

Short line distance from Chicago to Missouri River points:

To—		
Omaha	492	miles
St. Joseph	470	"
Kansas City	455	"
Average.....	472	"

2182 Table showing the average distance by short line routes from Mississippi River points to Missouri River points:

To Omaha from—		
East Dubuque, (Ill. Cent.)	335	miles
Savanna, (C. M. & St. P.)	354	"
Rock Island, (C. R. I. & P.)	322	"
E. Clinton, (C. & N. W.)	356	"
E. Burlington, (C., B. & Q.)	297	"
Average.....	289	"

To St. Joseph from—		
Rock Island (C. R. I. & P.)	317	miles
Quincy (C. B. & Q.)	208	"
E. Ft. Madison (A. T. & S. F.)	253	"
E. St. Louis (C., B. & Q.)	330	"

To Kansas City from—		
Quincy (C., B. & Q.)	226	miles
Rock Island (C. R. I. & P.)	337	"
E. Ft. Madison (A. T. & S. F.)	219	"
E. Louisiana (C. & A.)	215	"
E. St. Louis (Wabash)	276	"

2183

I. C. C. DOCKET No. 983.

Complainant's Exhibit No. 4.

Before Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Plaintiffs,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Tables showing comparisons of rates from Atlantic seaboard by way of Chicago, and by way of St. Louis, to western points to demonstrate that the amounts received and retained by the railroad lines west of Chicago to Omaha, St. Joseph and Kansas City, are excessive, unjust and discriminatory.

2184

1.

Standard Rail Rates from Atlantic Seaboard to Chicago, St. Louis, Kansas City, etc.

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.
N. Y. to Chicago, 912 miles. . . .	.75	.65	.50	.35	.35
N. Y. to St. Louis, 1063 " . . . .	.87	.75	.58	.41	.35
N. Y. to K. C., 1342 "	1.47	1.20	.93	.68	.57

The rate to St. Louis, supra, is same as to other Mississippi River points.

Rate to Kansas City is same as to other *Missouri River* points.

Rate to St. Louis and *Mississippi River* points is made by taking rate New York to Chicago as base and computed on mileage basis 116 per cent.

Computing on same mileage basis the rate to Kansas City or Missouri River points would be 147 per cent on Chicago rate, or

1.10	95¼	.72½	.51½	.44
------	-----	------	------	-----

Reductions over present rates would be so computed:

.37	.24¾	.20½	.16½	.13
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2185

2.

Divisions of Through Rates from Atlantic Seaboard to Omaha, St. Joseph and Kansas City.

R. R. east of Chicago receive.	72 3/10	62 4/10	48 4/10	34 3/10	29 4/10
R. R. west of Chicago receive.	74 7/10	57 6/10	44 6/10	33 7/10	27 6/10
	<u>1.47</u>	<u>1.20</u>	<u>.93</u>	<u>.68</u>	<u>.57</u>

If rates were reduced to amount as prayed for, to-wit:

1.10	.95	.72	.51	.44
------	-----	-----	-----	-----

and eastern roads retained same amount as now, the roads west of Chicago would have

.37 7/10	.32 6/10	.34 1/10	16 24/10	.14 6/10
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2186

3.

Rates from New York to Omaha, Computed on Basis of Rates from New York to Chicago.

New York to	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.
New York to Chicago, 912 miles	.75	.65	.50	.35	.30
Omaha, 1405 miles, or 154 per cent.	1.15½	1.00	.77	.53 90/100	.46 20/100
Rate to St. Paul is.	1.15	.99	.76	.53	.46

The above table shows railroads do carry freight to St. Paul and Minneapolis on basis as from New York to Chicago and therefore can be done with profit, and why not to Omaha, St. Joseph and Kansas City?

2187

4.

That the proportional of rates that would accrue to western roads if rates were reduced as prayed, as shown on table 2 supra, would not be unjust, but would be compensatory, see the following:

Rates Prayed for from New York to Omaha, St. Joseph and Kansas City.

Class 1.	Class 2.	Class 3.	Class 4.	Class 5.
1.10	95¼	72½	51½	44

If railroads east Chicago should retain same as now, to wit:

Western R. R. would have

72 3/10	64 4/10	48 4/10	34¾	20 4/10
37 7/10	30 6/10	34¼	16¼	14 6/10

If it be said the amount to be retained by western railroads, if rates to be so reduced, is too small, or not compensatory, we refer to the following facts:

(a) On business via Chicago and destined to St. Louis, the lines west of Chicago accept and receive as follows, to-wit: Chicago to St. Louis, 284 miles, C. & A.

14 7/10	12 6/10	9 6/10	6 7/10	5 6/10
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On same basis rates from Chicago to Omaha, 500 miles, should not exceed the following, to-wit:

26.	22.	17	11.	10.
-----	-----	----	-----	-----

This would be only $\frac{2}{3}$ of what the western roads would secure and retain if the rate prayed for is granted—and yet must
 2188 be presumed compensatory, and is only about $\frac{1}{3}$ of rate at present exacted. (See table 2 supra.)

The rates we pray for would allow roads west of Chicago $\frac{1}{2}$ the rates now exacted. (See table 2 supra.)

(b) A similar result is reached by a comparison of rates via Chicago to St. Paul, and to Omaha, etc.

Chicago to Omaha, etc., retained by western roads:

500 miles..... 74 3/10 57 6/10 44 6/10 33 7/10 27 6/10

Chicago to St. Paul & Minneapolis:

430 miles..... 40 34 26 18 16

On mileage basis, based on rate to St. Paul and Minneapolis, the roads west of Chicago to Omaha shall receive not to exceed:

45 38½ 29¼ 20¼ 18

Actual rates Chicago to Omaha on division as now charged. (See table 2 supra:)

74 7/10 57 6/10 44 6/10 33 7/10 27 6/10

It will thus be seen that the rate Chicago to Omaha is about $\frac{1}{2}$ more than a rate which is confessedly compensatory.

(c) *On shipments from N. Y. to Pacific Coast the same low rates are allowed west of Chicago only, and distribution of rates is as follows, to wit:*

2189 To R. R. east of Chicago:

75 65 50 35 30

To R. R. Chicago to Mo. River:

33 75/100 29 25/100 25 5/10 25 25/100 20 25/100

To R. R. West of Mo. River:

191 25/100 165 75/100 144 5/10 131 75/100 114 75/100

This allows the roads east of Chicago full local rates—while the roads from Chicago accept less than $\frac{1}{2}$ the rates charged to Omaha, St. Joseph and Kansas City.

Chicago to Omaha, St. Joseph and K. C.:

74 7/10 57 6/10 44 6/10 33 7/10 27 6/10

On Pacific Coast business:

33 75/100 29 25/100 25 5/10 23 25/100 20 25/100

Certainly the division of rates to roads from Chicago to Mo. River is compensatory—why, therefore, more than double that charge on goods that are consigned to Omaha, St. Joseph and Kansas City

Query: Has a railroad a right to charge Omaha, St. Joseph and Kansas City a rate that is more than 100 per cent higher than a rate that is compensatory, and more than 100 per cent higher than a rate that is charged on goods consigned elsewhere?

(d) *Railroad Rates from Chicago to Oklahoma City and Division of Rates.*

Chicago to Oklahoma City:

\$1.20	\$1.20	\$1.07	.89	.72
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R. R. Chicago to K. C. retain of this rate:

48	41 3/10	34 2/10	29 5/10	23
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2190 If the goods are consigned to K. C. same roads retain:

74 7/10	57 6/10	44 6/10	37 7/10	27 6/10
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It follows, if the rate retained on goods consigned to Oklahoma City is compensatory, the rate retained on goods consigned to Kansas City is excessive.

(e) *Comparison with Rates to Texas Common Points.*

Chicago to Texas Common Points:

\$1.57	\$1.37	\$1.16	\$1.06	82
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R. R. Chicago to K. C. retain 30%:

47 1/10	41 1/10	34 8/10	24 6/10
---------	---------	---------	---------

The same argument applies to shipments to Texas common points as to shipments to Oklahoma City, (See letter *d* supra.)

(f) *Comparison with rates to El Paso.*

N. Y. to Kansas City, 1370 miles—

\$1.47	\$1.20	93	68	57
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of which lines west of Chicago receive:

74 7/10	57 5/10	44 6/10	33 7/10	27 6/10
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Chicago to El Paso via Kansas City, 1406 miles:

\$1.69	\$1.50	\$1.34	\$1.26	.93
--------	--------	--------	--------	-----

on El Paso business, lines east of Kansas City or Chicago to K. C. receive 30% or

47 1/10	41 1/10	34 8/10	31 8/10	24 6/10
---------	---------	---------	---------	---------

Which is lower than rates Chicago to Kansas City on consignments to Mo. River points in the following, to wit:

2191	27 6/10	16 5/10	9 8/10	1 9/10	3
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It cannot be said there is water competition from Chicago to El Paso, yet R. R. carry Chicago to K. C. at a rate almost as low as the rate Chicago to St. Paul and Minneapolis.

If this percentage of rates on consignments to El Paso is compensatory, why should not R. R. from Chicago give same rate to Omaha, St. Joseph and Kansas City, to wit:

	47 1/-0	41 1/10	34 8/10	31 8/10	24 6/10
Now charged.....	74 7/10	57 5/10	44 6/10	33 7/10	27 6/10

2192

5.

Comparison of Rates from Atlantic Seaboard via Chicago to Omaha, St. Joseph and Kansas City, and via Chicago to St. Paul and Minneapolis.

N. Y. to Omaha, St. Joseph and Kansas City:

\$1.47	\$1.20	93	68	57
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N. Y. to St. Paul:

\$1.15	.99	76	53	46
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Roads east of Chicago on St. Paul and Minneapolis business retain full local rates to Chicago:

75	65	50	35	30
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R. R. west of Chicago on consignments to Omaha, St. Joseph and Kansas City, retain:

74 7/10	57 6/10	44 6/10	33 7/10	27 6/10
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R. R. west of Chicago on consignments to St. Paul and Minneapolis retain:

40	34	26	18	16
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The claim that the lower rates to St. Paul and Minneapolis are justified by water competition is unsound.

(a) There is no direct or through water line from Chicago to St. Paul and Minneapolis. From Chicago to Duluth by water is about — miles, and Duluth is about — miles from St. Paul by rail. No shipments of mercantile goods go by that route from Chicago to St. Paul.

2193 (b) The eastern R. R. do not make any distinction in rates on goods via Chicago, consigned to St. Paul and Minneapolis

and goods via Chicago to Omaha and Kansas City; that is to say the eastern roads exact the full local from N. Y. to Chicago.

The reduction in rates to St. Paul and Minneapolis is borne by the roads west of Chicago. This conclusive proof that the fear of water competition does not bring about reduced rates on the eastern roads on consignments via Chicago to St. Paul and Minneapolis, yet there is more direct water competition by St. Lawrence River and Erie Canal from seaboard, and Lakes from Buffalo to Chicago than there is from Chicago to St. Paul and Minneapolis.

(c) The physical condition from Chicago to St. Paul and Minneapolis are substantially the same as from Chicago to Omaha, St. Joseph and Kansas City—If roads Chicago to St. Paul can afford to give St. Paul and Minneapolis the rates

40 34 26 18 16

why can they not afford to give Omaha, St. Joseph and Kansas City the same rates?

2194 (d) The western R. R. make the same rate, Chicago to Duluth, as to St. Paul, etc.

Chicago to Duluth, 479 miles. 40— 26— 18— 16

If this rate to Duluth is compensatory, why will not the same rate to Omaha, St. Joseph and Kansas City be compensatory?

The Soo Line, instead of making its own rates, has made its rates to conform to rates established by the Western Trunk Line Association. The facts show the R. R. from Chicago to St. Paul and Minneapolis make the rates, and the Soo Line accepts the same.

2195 Soo Line Tariff G. T. D. 2247, I. S. C. C. No. 239, Aug. 9, 1897, makes effective the same rates as are named in J. F. T. tariffs No. 9 and 10—No. 17, or as they may be made, amended, or re-issued.

G. W. G. F. D. 2558, supersedes 2247.

I. C. C. 443 " 239

Effective July 26, 1898, contains same provision as 239 supra, and refers to

Jt. Ft. Tariff, 28:

" " " 10:

" " " 104, etc.,

or as they may be amended or re-issued and makes these rates effective on Soo Line.

Conclusion—American R. R. Makes the Rates.

Soo Line, G. F. D. 2607:

I. C. C. No. 462—

Effective October, 1898, Contains same provisions and refers to Jt. Ft. Tariff 108 which makes the 40 cents scale—

Soo Line—I. C. C. No. 462, remained in effect until July 8th, 1907.

2196

6.

Division of Railroad Rates by Percentages Over Division Points as Shown by the Following Illustrations.

(a) To Colorado common points.

	1	2	3	4	5
Thro. rate from					
N. Y.....	272	220	173	133	107
Proportion earned					
Chicago to Mo. R.	69 8/10	55 9/10	44 1/10	34 4/10	27 3/10

17.5% of N. Y. Miss. R. rate;
29.5% of Miss. R. Colorado rate.

Thro. rate from					
Chicago	205	165	125	97	77
Proportion earned					
Chicago to Mo. R.	72 8/10	58 6/10	44 4/10	34 4/10	27 3/10

(35.5%) on Chicago-Colorado business.

Proportion earned					
Chicago to Mo. R.					
of N. Y.—Omaha					
rate	75 2/10	58 1/10	45 2/10	34 2/10	28 1/10

Distances:

N. Y. to Chicago.....	912 miles
Chicago to Omaha	492 "
Omaha to Denver	538 "

2197 (b) To Utah Common Points.

	1	2	3	4	5
Thro. rate from					
N. Y.....	377	320	263	211	175
Proportion earned					
Chicago to Mo. R.	64 5/10	54 7/10	45	36 1/10	29 9/10

17.5% N. Y. Miss. R. Rate.
17% Miss. R. rate Utah rate.

Thro. rate from					
Chicago	310	265	215	175	145
Proportion earned					
Chicago to Mis-					
souri River, 21%.	65 1/10	55 6/10	45 1/10	36 7/10	30 4/10

Proportion earned					
Chicago to Mis-					
souri River on N.					
Y. Omaha rate..	75 2/10	58 1/10	45 2/10	34 2/10	28 1/10

Distances:

New York—Chicago	912 miles;
Chicago—Omaha	492 "
Omaha—Ogden	1000 "

2198

(c) Transcontinental Traffic.

	1	2	3	4	5
New York to Pacific Coast Termini ..	300	260	220	190	165

(25% to east of Chicago lines—15% of balance to Chicago, Missouri River lines after deducting arbitrary of 5%.)

Earned by Chicago—Mo. River lines.	38	33 5/10	29	25 6/10	22 8/10
------------------------------------	----	---------	----	---------	---------

Chicago to Pacific Coast Termini ..	300	260	220	190	165
-------------------------------------	-----	-----	-----	-----	-----

Earned by Chicago—Missouri River lines	49 25/100	43 25/100	37 25/100	32 75/100	29
--	-----------	-----------	-----------	-----------	----

159 of thro. rate after deducting arbitrary of 5 cts.

Earned by Chicago—Mo. River lines on Omaha rates..	75 2/10	58 1/10	45 2/10	34 2/10	28 1/10
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Distances:

New York—Chicago..	912 miles:	Omaha—Los Angeles..	1818 m.
Chicago—Omaha	492 "	Omaha—Portland.....	1799 m.
Omaha—San Francisco	1786 "		

2199 (d) Transcontinental Commodities to Termini Only.

New York Rate:	L. C. L.	C. L.
Cotton Piece Goods.....	1.50	1.00
Earned by Chicago—Missouri River lines..	21 1/10	15 5/10

Chicago rate:

Cotton Piece Goods.....	1.50	1.00
Earned by Chicago—Missouri River lines...	26 75/100	19 25/100
Earned by Chicago—Missouri River Lines on Omaha business.....	46 2/10	

(Regardless of quantity.)

2200 (e) Transcontinental Terminal Commodities.

L.

Cotton, Duck & Denim, Drills, Sheetting & Bagging.

	L. C. L.	C. L.
New York rate	1.35	.90
Chicago-Missouri River lines earn.....	19 4/10	14 4/10
Chicago rate	1.35	.90
Chicago-Missouri River lines earn.....	23	17 75/100
Chicago to Omaha when from New York, if on cotton goods basis.....	46.2¢	

2201 (f) Transcontinental Commodities.

Boots and Shoes:

New York rate	2.50
Earned by Chicago-Missouri River lines.....	41 75/100

In contrast with—

Earned by Chicago-Missouri River lines on Omaha business	75 2/100
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2202 (g) Transcontinental Commodities.

Drugs, Medicines, Chemicals, Extracts and Dye Stuff.

	L. C. L.	C. L.
New York rate	1.90	1.40
Earned by Chicago-Missouri River lines....	25 6/10	.20
Chicago rate	1.90	1.40
Earned by Chicago-Missouri River lines....	32 75/100	25 25/100
Earned by Chicago-Missouri River lines on Omaha business		75 2/10

2203 (h) To Texas Common Points.

	1	2	3	4	5
Pittsburg rates ..	1.87	1.66	1.36	1.19	.94
Deduct locals ...	55 5/10	48 5/10	37	26	22 5/10
Miss. R. to destination	1.31 5/10	1.17 5/10	99	93	71 5/10
Of which western road gets 20% Miss. R. to Mo. R.....	26 3/10	23 5/10	19 8/10	18 6/10	14 3/10
and 28% of the locals.	15 5/10	13 6/10	10 4/10	7 3/10	6 3/10
Total.....	41 8/10	37 1/10	30 2/10	25 9/10	20 6/10

(Earned Chicago to Mo. R. Pittsburg-Texas business.)

Chicago—Kansas

City coming

from New York 75 2/10 58 1/10 45 2/10 34 2/10 28 1/10

Or, dividing on Chicago:

	1	2	3	4	5
Pittsburg rates ..	187	166	136	119	94
	45	39	30	21	18
	<u>142</u>	<u>129</u>	<u>106</u>	<u>98</u>	<u>76</u>

Of which Chicago

Kansas City

lines receive

30% 42 6/10 38 1/10 31 8/10 29 4/10 22 8/10

Vs. Chicago to

Kansas City rate

on New York

business 75 2/10 58-1/10 45 2/10 34 2/10 28 1/10

Pittsburg-Chicago 468 miles;
Chicago-Kansas City 458 miles.

2204

(l) To Texas Common Points.

	1	2	3	4	5
Chicago rates ...	157	137	116	106	82
Of which Chicago					
Missouri River					
lines earn to K.					
C. (30%)	47 1/10	41 1/10	34 8/10	31 8/10	24 6/10
For many years					
up to Jan. 1,					
1907, they					
earned 25%	39 1/4	34 1/4	29	26 5/10	21

(And paid their proportion of rebates out of that.)

Chicago Kansas

City lines earn

on New York

business to Kan-

sas City 75 2/10 52 1/10 45 2/10 34 2/10 28 1/10

Chicago to Kansas City 458 miles;
Kansas City to Ft. Worth 506 "
Kansas City to San Antonio 840 "
Kansas City to San Angelo 960 "

2205

I. C. C. DOCKET No. 983.

Exhibit No. 6.

Before Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Plaintiffs,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

*Tables as to Comparative Cost of Operation and Profits Between
Eastern and Western Railroads.*

- I. Cost of Coal per ton.
- II. Freight Earnings per ton per mile.
- III. Operating Expenses to Earnings.
- IV. Surplus Earnings.

2206

I.

*Comparative Cost of Coal on R. R. East of Chicago with R. R. West
of Chicago and East of Missouri River.*

N. Y. C. & H. R.	Average cost of coal...	\$1.48
L. S. & M. S.	" " " " ...	1.63
Penna. R. R.	" " " " ...	1.32
C. & A. R.	" " " " ...	1.19
Wis. Cent. Ry.	" " " " ...	1.86
C., B. & Q. Ry.	" " " " ...	1.54 East Mo. R.
C. & N. W. Ry.	" " " " ...	1.77 (Whole system).
C. R. I. & P. Ry.	" " " " ...	1.57 1896 East Mo. R.
C. R. I. & P. Ry.	" " " " ...	2.00 (whole system).

The cost of fuel averages about 10 per cent of operating expenses on all roads. The gross fuel account on Western railroads is about \$5,000,000 a year. The cost of coal on roads west of Chicago and east of the Missouri River is, on the average, but little higher than roads east of Chicago. The per cent of difference in the aggregate is too small to be a factor in making rates.

To illustrate the insignificance of the cost of fuel on western roads over eastern roads, let us make an illustration:

The cost of fuel to the C. B. & Q. east of the Missouri River is \$1.54 per ton, which is less than that paid by the Lake Shore & Michigan Southern, but a little more than that paid by the New York Central.

2207 The operating expense account of the C. B. & Q. is \$50,-045,125.50; fuel account is \$5,149,477.00, being but a fraction over one-tenth of cost of operation. To reduce the fuel account of the C. B. & Q. to the cost of fuel on the New York Central would reduce the gross fuel account of the C. B. & Q. \$201,402.00. This would be the gross reduction on fuel account on all freight tonnage.

The gross merchandise tonnage of the railroads, on an average, is much less than 10% of the total freight tonnage, to-wit:

N. Y. C. Ry.....	11 24/100	per cent
L. S. & M. S.....	6 2/10	" "
Penna. R. R.....	5 74/100	" "
C. M. & St. P. Ry.....	8 85/100	" "
C. St. P. M. & O.....	6 89/100	" "

It is thus apparent that less than one-tenth of the entire fuel account is expended in hauling the gross merchandise, and which applied to the C. B. & Q., from the above computation, would effect less than \$20,000.00 in the fuel account on its entire system.

If the gross fuel account is an item on which rates can be based, the Penna. Ry. should charge less than the Lake Shore & Michigan Southern, and the Wisconsin Central should charge a higher freight rate than any of the others; and the C. B. & Q. and the C. R. I. & P. should charge less west of Chicago than the Lake Shore & Michigan Southern charges east of Chicago.

2208

II.

Average Freight Receipts Per Ton Per Mile, 1906, Between Eastern and Western Railroads.

L. S. & M. S. Ry.....	.516	Mills
N. Y. C. & H. R. R.....	.625	"
Penna. R. R.....	.588	"
P. C. C. & St. L. Ry.....	.635	"
Wis. Cent. Ry.....	.661	"
C. & A. R. R.....	.639	"
C. B. & Q. Ry.....	.804	"
C. B. & N. Ry.....	.666	"
C. St. P. M. & O. R. R.....	.931	"
C. M. & St. P. Ry.....	.862	"
C. R. I. & P. Ry.....	.930	"
C. & N. W. Ry.....	.888	"

It will be noted that the roads west of Chicago earn more per ton per mile than do the roads east of Chicago.

The average freight receipts per ton per mile on the first six roads named in the above table, is .610 mills. The average freight receipts per ton per mile on the six last named roads in the above table is .846 mills. In other words, the earnings per ton per mile by the six last named roads is 38% greater than the like earnings on the first six roads named in above table.

2209 *Revenue Per Ton Per Mile in Mills.*

East.

N. Y. C. & H. R.....	6.25
L. S. & M. S.....	5.16
P. R. R.....	5.88
P. Co.	6.03
P. C. C. & St. L.....	6.35

West.

C. & N. W.....	8.88
C. B. & Q.....	8.04
C. M. & St. P.....	8.62
C. G. W.	6.88
C. & A.	6.39

The average revenue per ton per mile on the five (5) Eastern roads is 5.93.

The average revenue per ton per mile on the five (5) Western roads is 7.76.

The average revenue per ton per mile on the five (5) Western roads is 31% greater than the average revenue per ton per mile on the five (5) Eastern roads.

2210

III.

Comparison of Operating Expenses to Earnings.

Operating expenses includes—

- 54 Maintenance. Way and Structures;
- 55 “ Equipment;
- 56 Conducting Transportation;
- 57 General Expenses.

	% oper. ex- penses to earnings.	Profit of earnings over oper. ex- penses.
N. Y. C. & H. R.....	71.34	28.66
P. C. C. & St. L. Ry.....	71.03	28.97
C. & A. Ry.....	67.51	32.41
L. S. & M. S. Ry.....	62.94	37.06
Wis. Cent. Ry.	69.32	30.68
C. B. & Q. Ry.....	67.04	32.96
C. St. P. M. & O. Ry.....	60.75	39.25
C. R. I. & P. Ry.....	69.92	30.08
C. & N. W. Ry.....	62.84	37.16

It will be seen that railroads west of Chicago are operated at a less per cent of gross income than are the roads east of Chicago, which means that under present railroad rates the roads west of Chicago have a higher per cent of profit over operating expenses than do the roads east of Chicago.

Surplus Earnings.

East:

N. Y. C. & H. R.....	\$15,172,621.94
L. S. & M. S.....	17,097,060.93
P. C. C. & St. L.....	5,000,122.98
Penna. Co. (P. F. W. & C.).....	7,344,339.47
* Penn. R. R.	24,477,406.09

* \$8,000,000.00 deducted for extraordinary expenses.

West:

C. B. & Q.	\$41,658,434.74
C. R. I. & P.....	15,331,037.36
* C. & N. W.....	13,956,820.30
C. M. & St. P. (Ry. age) Yr. 1906 only.....	5,787,924.00

Total surplus about..... 25,000,000.00

* Deducts \$6,000,000.00 from income for permanent improvements.

By the preceding tables it will be observed that the western roads earn more per ton per mile on freight traffic than do the eastern roads, 38% more, and that the revenue per ton per mile on the western roads is 31% greater than on the eastern roads, and that the western roads are operated at a less per cent of the gross income than are the eastern roads, and that the western roads have a much larger surplus in earnings than do the eastern roads.

Exhibit No. 7.

Before Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Plaintiffs,

v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Tables of Freight Rates from New York to Western Towns and Cities Showing that Jobbers in Omaha, St. Joseph and Kansas City are in a "Pocket" or Disadvantage, and that More Favorable rates are Given to Their Competitors in St. Louis, St. Paul and Minneapolis.

	1	2	3	4	5
New York to Omaha..	87	75	58	41	35
Omaha to Falls City,					
Neb.	40	35	25	22½	17½
	60	45	35	27	22
Thro.....	1.87	1.55	1.18	90½	74½

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO. ET AL. 1023

New York to St. Louis	87	75	58	41	35
St. Louis to Falls City, Neb.	60	45	35	27	22
Thro.....	1.47	1.20	93	68	57

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	7199
W. T. L.	....	741	....	....	5174

2214

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Table Rock, Neb.	40	35	25	22½	17½
	1.87	1.55	1.18	90½	74½

New York to St. Louis	87	75	58	41	35
St. Louis to Table Rock, Neb.	65	50	39	31	25
	1.52	1.25	.97	.72	.60

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	7199
W. T. L.	....	741	....	....	5174

2215

	1	2	3	4	5
New York to Omaha.	1.47	1.20	.93	.63	.57
Omaha to Crete, Neb.	35	30	25	20	17
	1.82	1.50	1.18	88	74

New York to St. Louis	87	75	58	41	35
St. Louis to Crete, Neb.	75	60	47	37	30
	1.62	1.35	1.05	.78	.65

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	7199
W. T. L.	....	741	....	....	5174

2216

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Ashland, Neb.	20	18	15	12	10
	1.67	1.38	1.08	20	67

New York to St. Louis	87	75	58	41	35
St. Louis to Ashland, Neb.	65	50	39	31	25
	<u>1.52</u>	<u>1.25</u>	<u>97</u>	<u>72</u>	<u>60</u>

P. R. R.	I. C. C. G.	2610	C. B. & Q.	I. C. C.	7199
W. T. L.	....	741	....	....	5174

2217

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Dunbar, Neb.	40	30	25	20	13
	<u>1.87</u>	<u>1.50</u>	<u>1.18</u>	<u>88</u>	<u>70</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Dunbar, Neb.	65	50	39	31	25
	<u>1.52</u>	<u>1.25</u>	<u>97</u>	<u>72</u>	<u>70</u>

P. R. R.	I. C. C. G.	2610	C. B. & Q.	I. C. C.	7199
W. T. L.	....	741	....	....	5174

2218

	1	2	3	4	5
New York to Kansas City	1.47	1.20	93	68	57
Kansas City to Cam- eron Jct.	31	26	20½	15	11½
	<u>1.78</u>	<u>1.46</u>	<u>1.13½</u>	<u>83</u>	<u>68½</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Cameron Jct.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>93</u>	<u>68</u>	<u>57</u>

P. R. R.	I. C. C. G.	2610	C. B. & Q.	I. C. C.	7342
W. T. L.	....	741	....	....	6550

2219

	1	2	3	4	5
New York to Kansas City	1.47	1.20	93	68	57
Kansas City to Ama- zonian	25	20	17	15	12
	<u>1.72</u>	<u>1.40</u>	<u>1.10</u>	<u>83</u>	<u>69</u>

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO. ET AL. 1025

New York to St. Louis	87	75	58	41	35
St. Louis to Amazonia.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>93</u>	<u>68</u>	<u>57</u>

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	7342
W. T. L.	.....	741	.....	.....	6550

2220	1	2	3	4	5
New York to Kansas City	1.47	1.20	93	68	57
Kansas City to Corning, Mo.	37	29	22	19	13
	<u>1.84</u>	<u>1.49</u>	<u>1.15</u>	<u>87</u>	<u>70</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Corning, Mo.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>93</u>	<u>68</u>	<u>57</u>

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	6550
W. T. L.	.....	741	.....	.....	7342

2221	1	2	3	4	5
New York to Kansas City	1.47	1.20	93	68	57
Kansas City to Salem, Neb.	37	29	23	20	13
	<u>1.84</u>	<u>1.49</u>	<u>1.16</u>	<u>88</u>	<u>70</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Salem, Neb.	65	50	39	31	25
	<u>1.52</u>	<u>1.25</u>	<u>97</u>	<u>72</u>	<u>60</u>

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	5174
W. T. L.	.....	741	.....	.....	6045

2222	1	2	3	4	5
New York to Kansas City	1.47	1.20	93	68	57
Kansas City to Tecumseh, Neb.	40	35	25	22½	17½
	<u>1.87</u>	<u>1.55</u>	<u>1.18</u>	<u>90½</u>	<u>74½</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Tecumseh, Neb.	65	50	39	31	25
	<u>1.52</u>	<u>1.25</u>	<u>97</u>	<u>72</u>	<u>60</u>

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	5174
W. T. L.	....	741	....	....	6045

2223

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Sidney, Ia. .	21½	18.02	14.14	10.6	07.42
	<u>1.68½</u>	<u>1.38.02</u>	<u>1.07.14</u>	<u>78.6</u>	<u>64.42</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Sidney, Ia.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>93</u>	<u>68</u>	<u>57</u>

P. R. R.	I. C. C. G.....	2610	C. B. & Q.	I. C. C.....	6269
W. T. L.	....	741	....	....	6550

2224

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Clarinda, Ia.	22.8	19.38	15.2	11.4	7.98
	<u>1.69.8</u>	<u>1.39.38</u>	<u>1.08.2</u>	<u>79.4</u>	<u>64.98</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Clarinda, Ia.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>93</u>	<u>68</u>	<u>57</u>

P. R. R.	I. C. C. G.....	2610	Q.	I. C. C.....	6269
W. T. L.	....	741	....	....	6550

2225

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Sheldon, Ia.	48	35	2.65	21.8	17.1
	<u>1.95</u>	<u>1.55</u>	<u>1.19</u>	<u>89.5</u>	<u>74.1</u>

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO. ET AL. 1027

New York to St. Paul.	1.15	99	76	53	46
St. Paul to Sheldon, Ia.	55	47	34	25.5	20
	<u>1.70</u>	<u>1.46</u>	<u>1.10</u>	<u>78.5</u>	<u>66</u>

W. T. L. I. C. C.	{ 741	M. & O. Amdmt. 8 I. C. C.	1934
	{ 678	.... I. C. C.	3016
P. R. R. I. C. C. G.	2610		

2226

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Canton, S. D.	46	39	30.5	23	16
	<u>1.93</u>	<u>1.59</u>	<u>1.23.5</u>	<u>91</u>	<u>73</u>

New York to St. Paul.	1.15	99	76	53	46
St. Paul to Canton, S. D.	60	50	35	27	20
	<u>1.75</u>	<u>1.49</u>	<u>1.11</u>	<u>80</u>	<u>66</u>

P. R. R. I. C. C. G.	2610	C. M. & St. & P. I. C. C.	A.	9511
W. T. L.	741	....	....	A. 9909
....	678			

2227

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Yankton, S. D.	58.5	50	38.5	29	22
	<u>2.05.5</u>	<u>1.70</u>	<u>1.31.5</u>	<u>97</u>	<u>79</u>

New York to St. Paul.	1.15	99	76	53	46
St. Paul to Yankton, S. D.	70	53	39	30	24
	<u>1.85</u>	<u>1.52</u>	<u>1.15</u>	<u>83</u>	<u>70</u>

P. R. R. I. C. C. G.	2610	C. M. & St. P.	I. C. C.	A.	9909
W. T. L.	678	....	....	A.	9511
	741				

2228

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Spencer, Ia.	4.32	32.16	24.4	19.88	15.36
	<u>1.90.2</u>	<u>1.52.16</u>	<u>1.17.4</u>	<u>87.88</u>	<u>72.36</u>

New York to St. Paul.	1.15	99	76	53	46
St. Paul to Spencer, Ia.	55	46	34	25	20
	<u>1.70</u>	<u>1.45</u>	<u>1.10</u>	<u>78</u>	<u>66</u>

St. P.	I. C. C. A.	9909
....	A.	4930
P. R. R.	I. C. C. G.	2610
W. T. L.	....	678
....	....	741

2229

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Wymore, Neb.	40	35	28	23	19
	<u>1.87</u>	<u>1.55</u>	<u>1.21</u>	<u>91</u>	<u>76</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Wymore, Neb.	75	60	47	39	32
	<u>1.62</u>	<u>1.35</u>	<u>1.05</u>	<u>80</u>	<u>67</u>

P. R. R.	I. C. C. G.	2610
W. T. L.	....	741
C. B. & Q.	....	5174
....	....	7199

2230

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Endicott, Neb.	45	40	33	24	20
	<u>1.92</u>	<u>1.60</u>	<u>1.26</u>	<u>92</u>	<u>77</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Endicott, Neb.	95	76	62	49	39
	<u>1.82</u>	<u>1.51</u>	<u>1.20</u>	<u>90</u>	<u>74</u>

C. B. & Q.	I. C. C.	5174
....	....	7199
P. R. R.	....	G2610
W. T. L.	....	741

2231

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Fremont, Neb.	28	25	20	15	12
	<u>1.75</u>	<u>1.45</u>	<u>1.13</u>	<u>83</u>	<u>69</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Fremont, Neb.	65	50	39	31	25
	<u>1.52</u>	<u>1.25</u>	<u>97</u>	<u>72</u>	<u>60</u>

C. B. & Q. I. C. C. 5174
 7199
 P. R. R. G 2610
 W. T. L. 741

2232

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Schuyler, Neb.	35	28	24	20	15
	<u>1.82</u>	<u>1.48</u>	<u>1.17</u>	<u>88</u>	<u>72</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Schuyler, Neb.	89	71	58	47	36
	<u>1.76</u>	<u>1.46</u>	<u>1.16</u>	<u>88</u>	<u>71</u>

C. B. & Q. I. C. C. 5174
 7199
 P. R. R. G 2610
 W. T. L. 741

2233

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to Oakland, Neb.	34	29	24½	18	14
	<u>1.81</u>	<u>1.49</u>	<u>1.17½</u>	<u>86</u>	<u>71</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Oakland, Neb.	85	68	53	44	34
	<u>1.72</u>	<u>1.43</u>	<u>1.11</u>	<u>85</u>	<u>69</u>

C. B. & Q.	I. C. C.	5174
.....	.....	7199
P. R. R.	.....	G 2610
W. T. L.	.....	741

2234

	1	2	3	4	5
New York to Omaha.	1.47	1.20	93	68	57
Omaha to S. Sioux Cy., Neb.	37½	30½	25	20½	16½
	<u>1.84½</u>	<u>1.50½</u>	<u>1.18</u>	<u>88½</u>	<u>73½</u>
New York to St. Louis	87	75	58	41	35
St. Louis to S. Sioux Cy., Neb.	88	70	55	45	36
	<u>1.75</u>	<u>1.45</u>	<u>1.13</u>	<u>86</u>	<u>71</u>

C. B. & Q.	I. C. C.	5174
.....	.....	7199
P. R. R.	.....	G 2610
W. T. L.	.....	741

2235

	1	2	3	4	5
New York to Kansas City.....	1.47	1.20	93	68	57
Kans. City to Neosho, Mo.....	49	40	33	23	18
	<u>1.96</u>	<u>1.60</u>	<u>1.26</u>	<u>91</u>	<u>75</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Neosho, Mo.....	74	64	50	40	28
	<u>1.61</u>	<u>1.39</u>	<u>1.08</u>	<u>81</u>	<u>63</u>

W. T. L.	I. C. C.	741
P. R. R.	.....	G 2610
K. C. S.	.....	1784
.....	.....	1547

2236

	1	2	3	4	5
New York to Kansas City.....	1.47	1.20	93	68	57
Kansas City to Pitts- burg, Kas.....	49	40	33	23	18
	<u>1.96</u>	<u>1.60</u>	<u>1.26</u>	<u>91</u>	<u>75</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Pittsburg,					
Kas.	74	64	50	40	28
	<u>1.61</u>	<u>1.39</u>	<u>1.08</u>	<u>81</u>	<u>63</u>

P. R. R. I. C. C. G.	2610
W. T. L.	741
K. C. S.	1784
.....	1547

2237	1	2	3	4	5
New York to Kansas					
City.....	1.47	1.20	93	68	57
Kansas City to West					
Line, Mo.	28	22	17	14	11
	<u>1.75</u>	<u>1.42</u>	<u>1.10</u>	<u>82</u>	<u>68</u>

New York to St. Louis	87	75	58	41	35
St. Louis to West Line,					
Mo.....	67	54	42	32	26
	<u>1.54</u>	<u>1.29</u>	<u>1.00</u>	<u>73</u>	<u>61</u>

K. C. S. I. C. C.	1784
.....	1547
W. T. L.	741
P. R. R. G.	2610

2238	1	2	3	4	5
New York to Kansas					
City.....	1.47	1.20	93	68	57
Kansas City to Hia-					
watha, Ks.	25	20	17	15	12
	<u>1.72</u>	<u>1.40</u>	<u>1.10</u>	<u>83</u>	<u>69</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Hiawatha,					
Ks.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>93</u>	<u>68</u>	<u>57</u>

P. R. R. I. C. C. G.	2610
W. T. L.	741
Mo. Pac.	7393
.....	7616

2239

	1	2	3	4	5
New York to Kansas City.....	1.47	1.20	93	68	57
Kansas City to Atchison, Ka.	22	18	15	12	10
	<u>1.69</u>	<u>1.38</u>	<u>1.08</u>	<u>80</u>	<u>67</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Atchison, Ks.	60	45	35	27	22
	<u>1.47</u>	<u>1.20</u>	<u>1.08</u>	<u>80</u>	<u>67</u>
P. R. R. I. C. C. G.	2610				
W. T. L.	741				
Mo. Pac.	7393				
.....	7616				

2240

	1	2	3	4	5
New York to Kansas City.....	1.47	1.20	93	68	57
Kansas City to Holton, Kas.....	29	24	19	15	10
	<u>1.76</u>	<u>1.44</u>	<u>1.12</u>	<u>83</u>	<u>67</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Holton, Kas.....	70	55	41	33	27
	<u>1.57</u>	<u>1.30</u>	<u>99</u>	<u>74</u>	<u>62</u>
P. R. R. I. C. C. G.	2610				
W. T. L.	741				
Mo. Pac.	7616				

2241

	1	2	3	4	5
New York to Kansas City.....	1.47	1.20	93	68	57
Kansas City to Virginia, Neb.	40	35	28	23	19
	<u>1.87</u>	<u>1.55</u>	<u>1.21</u>	<u>91</u>	<u>76</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Virginia, Neb.....	72	57	43	35	28
	<u>1.59</u>	<u>1.32</u>	<u>1.01</u>	<u>76</u>	<u>63</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	.....		741
Mo. Pac.	.....		7393
.....	.....		7616

2242

	1	2	3	4	5
New York to Kansas					
City.....	1.47	1.20	93	68	57
Kansas City to Paola,					
Kans.....	28	22	17	14	10
	<u>1.75</u>	<u>1.42</u>	<u>1.10</u>	<u>82</u>	<u>67</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Paola,					
Kans.....	72	57	45	32	27
	<u>1.59</u>	<u>1.32</u>	<u>1.03</u>	<u>73</u>	<u>62</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	.....		741
Mo. Pac.	.....		7393
.....	.....		7616

2243

	1	2	3	4	5
New York to Kansas					
City.....	1.47	1.20	93	68	57
Kansas City to Blue					
Mound, Mo.	36	31	27	20	15
	<u>1.83</u>	<u>1.51</u>	<u>1.20</u>	<u>88</u>	<u>72</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Blue					
Mound, Mo.	85	66	55	40	32
	<u>1.72</u>	<u>1.41</u>	<u>1.13</u>	<u>81</u>	<u>67</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	.....		741
Mo. Pac.	.....		7393
.....	.....		7616

2244

	1	2	3	4	5
New York to Kansas					
City.....	1.47	1.25	93	68	57
Kansas City to Madi-					
son, Kas.....	53	44	38	30	26
	<u>2.00</u>	<u>1.69</u>	<u>1.31</u>	<u>98</u>	<u>83</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Madison, Kas.....	1.04	85	70	54	46
	<u>1.91</u>	<u>1.60</u>	<u>1.28</u>	<u>95</u>	<u>81</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	....		741
Mo. Pac.	....		7393
....	....		7616

2245

	1	2	3	4	5
New York to Kansas City.....	1.47	1.25	93	68	57
Kansas City to Yates Center, Kans.	52	43	38	28	23
	<u>1.99</u>	<u>1.68</u>	<u>1.31</u>	<u>96</u>	<u>80</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Yates Center, Ks.	1.01	79	66	50	40½
	<u>1.88</u>	<u>1.54</u>	<u>1.24</u>	<u>91</u>	<u>75½</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	....		741
Mo. Pac.	....		7393
....	....		7616

2246

	1	2	3	4	5
New York to Kansas City.....	1.47	1.25	93	68	57
Kansas City to Eldo- rado, Kas.	58	52	45	36	31
	<u>2.05</u>	<u>1.77</u>	<u>1.38</u>	<u>1.04</u>	<u>88</u>

New York to St. Louis	87	75	58	41	35
St. Louis to Eldorado, Kas.....	1.12	92	76	60	50½
	<u>1.99</u>	<u>1.67</u>	<u>1.34</u>	<u>1.01</u>	<u>85½</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	....		741
Mo. Pac.	....		7393
....	....		7616

2247

	1	2	3	4	5
New York to Kansas City.....	1.47	1.25	93	68	57
Kansas City to Hutchinson, Kans.	66	58	50	40	36
	<u>2.13</u>	<u>1.83</u>	<u>1.43</u>	<u>1.08</u>	<u>93</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Hutchinson, Ks.	1.19½	98	81	64	55
	<u>2.06½</u>	<u>1.73</u>	<u>1.39</u>	<u>1.05</u>	<u>90</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	....		741
Mo. Pac.	....		7393
....	....		7616

2248

	1	2	3	4	5
New York to Kansas City.....	1.47	1.25	93	68	57
Kansas City to Coffeyville, Kas.	52	48	42	32	28
	<u>1.99</u>	<u>1.73</u>	<u>1.35</u>	<u>1.00</u>	<u>85</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Coffeyville, Ks.	1.01	83	69½	52	43
	<u>1.88</u>	<u>1.58</u>	<u>1.27½</u>	<u>93</u>	<u>78</u>

P. R. R.	I. C. C.	G.	2610
W. T. L.	....		741
Mo. Pac.	....		7393
....	....		7616

2249

	1	2	3	4	5
New York to Kansas City.....	1.47	1.25	93	68	57
Kansas City to Arkansas City, Kans.	75	63	57	48	42
	<u>2.22</u>	<u>1.88</u>	<u>1.50</u>	<u>1.16</u>	<u>99</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Arkansas City, Kans.	1.25	1.03	86	70	58
	<u>2.12</u>	<u>1.78</u>	<u>1.44</u>	<u>1.11</u>	<u>93</u>

Mo. Pac.	I. C. C.	7616
.....	.....	7393
P. R. R.	I. C. C. G.	2610
W. T. L.	.....	741

2250

	1	2	3	4	5
New York to Kansas City.....	1.47	1.20	93	68	57
Kansas City to Washington, Kas.	45	39	35	25½	21½
	<u>1.92</u>	<u>1.59</u>	<u>1.28</u>	<u>93½</u>	<u>78½</u>
New York to St. Louis	87	75	58	41	35
St. Louis to Washington, Kas.	95	76	62	49	41
	<u>1.82</u>	<u>1.51</u>	<u>1.20</u>	<u>90</u>	<u>76</u>

Mo. P.	I. C. C.	7393
.....	.....	7616
P. R. R.	..... G.	2610
W. T. L.	.....	741

2251

I. C. C. DOCKET No. 983.

Ex. No. 8.

Before Interstate Commerce Commission.

BURNHAM, HANNA, MUNGER DRY GOODS COMPANY et al., Plaintiffs,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY et al., Defendants.

Tables Showing that the Railroad Rates on Dry Goods, Cotton Piece Goods, Boots and Shoes and Articles Chiefly Dealt in by the Complainants, Have Been Increased Instead of Diminished During the Last Nineteen Years, Notwithstanding the Fact that During the Same Period of Time said Goods and Merchandise Can be More Cheaply Carried and with Less Risk to Railroads by Reason of Improved Methods of Packing; and Notwithstanding the Further Fact that the Actual Cost of Transportation by the Railroads Has Been Reduced.

2252

Railways of the United States in 1902.

Part II, Page 94, Table LIX.

Rate Chicago to Missouri River.

Dry Goods, Boots and Shoes:

January 9, 1888.....	75¢	per 100
February 22, 1890.....	60¢	" "
August 1, 1890.....	70¢	" "

January 1, 1891.....	75¢	"	"
May 10, 1894.....	35¢	"	"
June 1, 1894.....	75¢	"	"
July 1, 1894.....	80¢	"	"

Has remained 80¢ to date.

Table 1 shows that the rate on dry goods, boots and shoes, from Chicago to Missouri River points is 33 $\frac{1}{4}$ % higher than the rate from Chicago to St. Paul. (See table 2).

Rate Chicago to Missouri River.

Cotton Piece Goods:

January 9, 1888.....	45¢	per	100
March 26, 1888.....	55¢	"	"
April 2, 1888.....	45¢	"	"
February 22, 1890.....	40¢	"	"

2253

August 1, 1890.....	47¢	per	100
May 10, 1894.....	20¢	"	"
June 1, 1894.....	47¢	"	"
July 1, 1894.....	50¢	"	"

Has remained at 50¢ to date.

2254

Railways of the United States in 1902.

Part II, Page 90, Table LV.

Rate Chicago to St. Paul.

(Local, not necessarily the rates on this traffic from seaboard.)

Dry Goods, Boots and Shoes:

November 15, 1887.....	50¢	per	100
June 4, 1888.....	60¢	"	"
September 25, 1889.....	40¢	"	"
November 20, 1889.....	60¢	"	"
February 17, 1890.....	40¢	"	"
August 1, 1890.....	50¢	"	"
November 17, 1890.....	60¢	"	"
May 18, 1896.....	55¢	"	"
June 21, 1896.....	60¢	"	"

Unchanged to April 1st, 1902.

(For figures since, see McVann's "History Chicago St. Paul rates" in other papers).

Rate Chicago to St. Paul.

Cotton Piece Goods:

November 15, 1887.....	30¢	per 100
June 4, 1888.....	35¢	" "
April 1, 1889.....	60¢	" "

2255

September 25, 1889.....	40¢	per 100
November 20, 1889.....	60¢	" "
February 17, 1890.....	40¢	" "
August 1, 1890.....	50¢	" "
November 17, 1890.....	60¢	" "
January 22, 1893.....	40¢	" "
June 21, 1896.....	30¢	" "
October 1, 1896.....	40¢	" "
January 22, 1900.....	50¢	" "
February 1, 1900.....	40¢	" "
To April 1, 1902.....		

(For history to date, see McVann's data.)

2256

Railways of the United States in 1902.

Part II, Page 96, Table LXI.

Rates from Mississippi River to Missouri River.

Cotton Piece Goods:

January 9, 1888.....	30¢	per 100
March 26, 1888.....	40¢	" "
April 2, 1888.....	30¢	" "
January 10, 1889.....	30¢	" "
February 22, 1890.....	25¢	" "
August 1, 1890.....	32¢	" "
January 1, 1894.....	35¢	" "
May 10, 1894.....	10¢	" "
June 1, 1894.....	32¢	" "
July 1, 1894.....	35¢	" "

(Unchanged to date.)

2257

Railways of the United States in 1902.

Part II, Page 96, Table LXI.

Rates from Mississippi River to Missouri River.

Dry Goods, Boots and Shoes:

January 9, 1888.....	55¢	per 100
February 22, 1890.....	40¢	" "
August 1, 1890.....	50¢	" "

January 1, 1891.....	55¢	"	"
January 1, 1894.....	60¢	"	"
May 10, 1894.....	15¢	"	"
June 1, 1894.....	55¢	"	"
July 1, 1894.....	60¢	"	"

(Unchanged to date.)

2258 Railways of the United States in 1902.

Part II, Page 34, Table XXI.

Comparison of Classification and Rates, Chicago to Missouri River.

Dry Goods in Boxes:

1878.	1887.	1890.	1895.
1st class.	1st class.	1st class.	1st class.
85¢	90¢	75¢	80¢

Down to date unchanged.

Drugs and Medicines:

1878.	1887.	1890.	1895.
1st class.	1st class.	1st class.	1st class.
85¢	90¢	75¢	80¢

2259 Railways of the United States in 1902.

Part II, Page 50, Table XXXI.

Rates from New York to East Mississippi River:

(Applied on business destined Missouri River.) Effective August 15, 1888.

Boots and Shoes	}	87¢ per cwt.
Dry Goods		

Unchanged to date.

Cotton Piece Goods:

August 15, 1888.....	58¢	per 100
January 1, 1900.....	75¢	" "
March 10, 1900.....	64¢	" "

Unchanged to date.

2260

Railways of the United States in 1902.

Part II, Page 154, Table CXIII.

New York to Pacific Coast Termini (Transcontinental.)

	Dry goods.	Cotton piece goods.	Drugs.
March 6, 1888.....	400	180	250
September 1, 1888.....	...	...	300
January 1, 1889.....	420	215	*330
January 15, 1891.....	...	235	*365
April 11, 1893.....	370	213	*334
June 24, 1897.....	150	100	*120
December 15, 1897.....	...	...	*125
June 25, 1898.....	260	150	*170

Until April 1, 1902, unchanged.

* Lower carload rates.

At some time since 1902, there was established the present transcontinental basis of 1.00, Cotton Piece Goods, carloads, New York to San Francisco, and 1.50 rate is now L. C. L. rate—

Table 6, supra, shows great reduction in transcontinental rates from 1888 to date on Dry Goods, Cotton Piece Goods, etc., while by preceding tables no reduction has been made in the same period of time in the rates on said classes of merchandise between Chicago and Omaha, St. Joseph and Kansas City. The same principle applies to succeeding table No. 7.

QUERY.—If during these nineteen years railroads could afford to carry these classes of goods in transcontinental business at greatly reduced rates, why should there not be a corresponding reduction of rates in the transmission of goods between Chicago and Omaha, St. Joseph and Kansas City?

2261

Railways of the United States in 1902.

Part II, Page 155, Table CXVI.

Chicago to Pacific Coast Termini (Transcontinental.)

	Dry goods.	Cotton piece goods.	Drugs.
March 6, 1888.....	325	145	200
January 1, 1889.....	390	195	*300
January 15, 1891.....	...	210	*335
April 11, 1893.....	340	188	*304
July 16, 1894.....	150	100	*120
December 15, 1897.....	...	...	*125
June 25, 1898.....	260	150	*170
To April 1, 1902.			

* This is L. C. L. rate. Lower rate on C. L. Cotton Piece Goods rate is now 1.00 in carloads. (See transcontinental "Termini & Commodity Tariffs.")

(Here follow blue prints, marked pages 2262, 2263, 2264, 2265.)

(Here follow report and tabular sheet marked pages 2265-j to 2266.)

2265a

Offered in Argument of Mr. Atwood.

Western Trunk Line Committee.

*Annual Statement of Tonnage and Revenue on Traffic to and from
Southwestern Missouri River and Junction Points for the Year
1906.*

Prepared by W. T. L. C.

Jas. V. Mahoney, Chairman.

Contents.

	Page.
Walnut Lumber & Logs, from So. West. Mo. Riv. Points, for	
Export	1
Eastbound from So. West. Mo. Riv. Points.....	2-3
Eastbound from Junction Points.....	2-3
Westbound to So. West. Mo. Riv. Points.....	4-5
Westbound to Junction Points.....	4-5
Comparative, East & Westbound Consolidated, Years 1905 & 1906	6
Comparative, East & Westbound Consolidated, Years 1901, '02, '03, '04, '05 & '06.....	7
Grain & Grain Products from So. West. Mo. Riv. Points....	8
Analytical Statement of Grain & Grain Products from So. West. Mo. Riv. Points.....	9

Chicago, April 16th, 1907.

MOVEMENT OF WALNUT LUMBER AND LOGS FOR EXPORT
FROM SOUTHWESTERN MISSOURI RIVER

LINES	VIA GULF PORTS		VIA SO ATLANTIC PORTS		TOTAL		LINES
	TONS	PER CENT	TONS	PER CENT	TONS	PER CENT	
A. T. & S. F.	464	14 ⁵			464	08 ⁹	A. T. & S. F.
C. & A.	914	28 ⁶	292	14 ⁶	1208	23 ²	C. & A.
C. B. & Q.	628	19 ⁷	* 771	38 ⁴	1399	26 ⁹	C. B. & Q.
C. G. W.			# 744	37 ¹	744	14 ³	C. G. W.
C. M. & ST. P.							C. M. & ST. P.
C. R. I. & P.							C. R. I. & P.
K. C. S.	960	30 ¹			960	18 ⁵	K. C. S.
M. K. & T.	170	05 ³			170	03 ³	M. K. & T.
MO. PAC.			92	04 ⁶	92	01 ⁸	MO. PAC.
Q. O. & K. C.							Q. O. & K. C.
ST. L. & S. F.							ST. L. & S. F.
WABASH	57	01 ⁸	107	05 ³	164	03 ¹	WABASH
TOTAL	3193	100%	2008	100%	5201	100%	TOTAL

26 Tons via New York
Via Montreal

TOTAL, VIA GULF AND SO ATLANTIC PORTS
COMPARATIVE, 1905 & 1906

LINES	1905		1906		LINES
	TONS	PER CT	TONS	PER CT	
A. T. & S. F.	242	04 ⁶	464	08 ⁹	A. T. & S. F.
C. & A.	204	04 ¹	1208	23 ²	C. & A.
C. B. & Q.	3083	61 ³	1399	26 ⁹	C. B. & Q.
C. G. W.			744	14 ³	C. G. W.
C. M. & ST. P.					C. M. & ST. P.
C. R. I. & P.	466	09 ³			C. R. I. & P.
K. C. S.	177	03 ⁵	960	18 ⁵	K. C. S.
M. K. & T.			170	03 ³	M. K. & T.
MO. PAC.	284	05 ⁶	92	01 ⁸	MO. PAC.
Q. O. & K. C.					Q. O. & K. C.
ST. L. & S. F.	328	06 ⁵			ST. L. & S. F.
WABASH	248	04 ⁹	164	03 ¹	WABASH
TOTAL	5032	100%	5201	100%	TOTAL

22651.

2267 The complainant objects to the introduction of said documents and each of them as incompetent, irrelevant and immaterial, the objection being made specifically to each of said documents offered, but no objection being made upon the ground of want of proof of the identity or correctness of the documents.

It was stipulated between the parties that the answers of the defendant intervenors, Burnham, Hanna, Munger Dry Goods Company, et al., to the bill of complaint herein shall be treated as answers to the petition of intervention of A. J. Lindeman and others.

2268 It was stipulated by and between the parties that it may be considered as proven that the railroad companies defendants in the said proceeding before the Interstate Commerce Commission did not file with the Commission any formal application for a rehearing in said cause.

It was further stipulated and agreed that the answer of the Interstate Commerce Commission shall be treated in this proceeding as the answer to the intervening petition on behalf of A. J. Lindeman and others if such intervening petition is filed with authority.

The Interstate Commerce Commission objects to the filing of the documents offered on behalf of the intervening defendant shippers solely on the ground that under the issues made in this case no evidence is material relevant or proper.

All parties thereupon rested.

2269 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, J. L. Bennett the Special Examiner appointed in the said cause by order of court entered herein on the First day of December, 1908, do hereby certify that the foregoing evidence and testimony was taken before me as such Special Examiner at the places and times therein indicated; that the several witnesses were duly sworn to testify to the truth in said matter and their testimony is hereinbefore set forth; that the signatures of the said witnesses to their depositions were waived by all of the counsel in said cause; that at the taking of the testimony and the introduction of the evidence hereinbefore set forth all of said parties were represented by counsel, as shown by the recitals connected with the said testimony.

In witness whereof I hereunto subscribe my name this 25th day of May, A. D. 1909.

J. L. BENNETT,
Special Examiner.

Examiner's fees \$915.00.

Advanced and paid by complainants \$457.50.

Advanced and paid by Intervening defendants \$228.75.

(Here follows blue print, marked page 2270).

2271

Key.

The solid Black Lines (on Blue print White), Seaboard to Chicago, Mississippi River and St. Paul, represent railways operating under Official Classification all the way through.

The dash Brown Lines (on Blue print White) from Chicago to St. Louis, Chicago to Minneapolis, Chicago to Missouri River, St. Louis to Missouri River, represent separate systems, whose lines do not go beyond points indicated. This is Western Classification Territory on Interstate traffic.

The Red Lines (on blueprint White) represent railways commencing at points where Brown Lines end, and running West. This is Western Classification Territory.

The X'd Green Lines (on blueprint X'd White) represent railways running from points indicated all the way through. Western Classification.

The Broken Yellow Lines (on blueprint Broken White) represent railways operating between Salt Lake City, San Francisco and Portland. Western Classification.

The Solid Yellow Lines (on blueprint White) represent railways running from St. Paul to Southeast Kansas Percentage points without passing through Kansas City.

The dotted Line (on blueprint White) Denver to Salt Lake City, represents railways running from Denver to Salt Lake City.

In Alabama, Georgia, Florida, etc., through rates from Ohio and Mississippi River points are made by using the locals into basing points, of which Atlanta, Birmingham and Jacksonville are merely representative, (there being a number of them, some 45 or more; see addenda marked Exhibit No. 1) plus rates out of such basing points.

Breaking of Rates.

The phrases "Combination on Missouri River" "Combination on St. Paul" "Combination via Various Terminals" indicate that rates on traffic from Territory East of Missouri River or St. Paul through to points West thereof are made by combining the rate into the Missouri River or St. Paul with the locals out, except in the three territories marked "Through Rates" "Differential over Omaha and "Southeastern Kansas Percentage Territory".

2272 In addition to the foregoing, rates from points east of the Missouri River through to points West also break at Fremont, Lincoln and Beatrice; as follows:

From Fremont and Lincoln to all points on the Northwestern System West to Lander, Wyoming, North West to Black Hills and Dallas, S. D. Also to points on their Southern Nebraska Lines which end at Superior and Hastings.

To points on the Union Pacific West as far as Denver and Cheyenne.

To points on the Burlington West taking in Denver, Cheyenne, Black Hills and Billings, Mont.

From Lincoln to points on the Rock Island directly West to the end of their line at Denver, Colorado Springs, and Pueblo.

From Beatrice to points on the Rock Island directly West to the Kansas, Colorado border.

2273 (Endorsed:) Filed Sep. 1, 1909. H. S. Stoddard, Clerk.

2274 And on the same day to-wit: the twenty-third day of June, 1909, there was filed in the clerk's office of said court in said entitled cause a certain Motion to dismiss in words and figures following to-wit:

2275 *Motion to Dismiss.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

v.

INTERSTATE COMMERCE COMMISSION.

Motion to Dismiss.

Now, at the conclusion of all the evidence herein, comes defendant, Interstate Commerce Commission, by its solicitors, and moves this Honorable Court to dismiss the intervening petition on behalf of the Illinois Central Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago & Alton Railway Company, the Missouri Pacific Railway Company, the Missouri, Kansas & Texas Railway Company, and the St. Louis & San Francisco Railroad Company, co-complainants herein, for the following reasons:

1. For that said intervening petitioners were not at any time parties to the complaint before the Interstate Commerce Commission out of which the order complained of grew.

2. For that said petitioners are not bound by or compelled to abide by the order complained of.

3. For that the order complained of does not run against or operate upon said petitioners.

4. For that said petitioners are guilty of laches in that they and each of them have failed in due season to petition the Interstate Commerce Commission for such action as said petitioners might think in right and justice should be taken by said Commission upon such petition.

2276 5. For that said petitioners and each of them filed said petition for the purpose of aiding, collusively and otherwise, the complainants herein in obtaining an injunction or restraining order against defendant herein to prevent the enforcement of the lawful order of the defendant.

6. For that no right of any of said intervening petitioners can be determined by any decree of this court herein.

2281

Motion to Dismiss.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29,247.

CHICAGO ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

vs.

INTERSTATE COMMERCE COMMISSION.

Motion to Dismiss.

Now, at the conclusion of all the evidence herein, comes defendant, Interstate Commerce Commission, by its solicitors, and moves this Honorable Court to dismiss the intervening petition on behalf of A. J. Lindemann and Hoveison Company of Milwaukee, Wisconsin; Roberts, Johnson and Rand Shoe Company, Whitelaw Brothers, The Simmons Hardware Company, of St. Louis, Missouri; Sprague, Warner & Company, Carson, Pirie, Scott & Company, of Chicago, Illinois; Kemiweld Can Company; Parke, Davis & Company, of Detroit, Michigan; Sherwin-Williams Company, of Cleveland, Ohio, to be made co-complainants, for the following reasons:

1. For that said intervening petitioners were not at any time parties to the complaint before this defendant out of which the order complained of grew.

2. For that said petitioners are not affected by or concerned in the enforcement of the order of this defendant.

3. For that said petitioners did not file said petition of intervention until long after the case herein was at issue and after the testimony on behalf of complainants herein had been concluded.

4. For that said petitioners have a complete remedy by application to the Interstate Commerce Commission in accordance with the provisions of the Act to Regulate Commerce, by petition for
2282 such relief and such action by the Commission as petitioners deem they are entitled to.

5. For that said order does not in any wise affect the rates of transportation paid by said intervening petitioners.

6. For that the only transportation affected by the order of this defendant is traffic originating in seaboard territory of the first five classes and destined to the Missouri River cities.

7. For that said intervening petitioners have no right to any order from this court which would prevent the competitors of said intervening petitioners from enjoying transportation of traffic from seaboard points of the first five classes to the Missouri River cities at just and reasonable rates.

8. For that said intervening petitioners are guilty of laches in that they and each of them have failed in due season to take such action as under law and equity they might or should have taken.

9. For that the order complained of is in every sense a valid and

lawful order and does not in any wise infringe any of the rights of intervening petitioners or either of them under the statutes or Constitution of the United States.

10. For that the rates established in and by said order are just and reasonable rates for the service involved in the transportation embraced within said order.

EDWIN W. SIMS,
LUTHER M. WALTER,
Solicitors for Defendant, Interstate Commerce Commission.

(Endorsed:) Filed Jun. 23, 1909, H. S. Stoddard, Clerk.

2283 And on the same day to-wit: on the twenty-third day of June, 1909, there was filed in the clerk's office of said court, in said entitled cause, a certain motion in words and figures following to-wit:

2284 *Motion to Strike from the Files All the Evidence Taken before the Special Examiner.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.
vs.

INTERSTATE COMMERCE COMMISSION.

Motion to Strike.

And now, at the conclusion of all the evidence herein, comes defendant, Interstate Commerce Commission, by its solicitors, and moves to strike from the files herein all the testimony taken before the Special Examiner herein for the following reasons:

1. For that the same is incompetent, immaterial and irrelevant to the issues herein.

2. For that there is no showing that said evidence is newly discovered or could not have been presented to the Interstate Commerce Commission in the hearing before it on the complaint out of which the order complained of grew.

3. For that there is no allegation of fraud or mistake or any testimony even tending to show such a situation as to authorize this Court to inquire as to the validity of the order of this defendant.

4. For that the only matter which this Court can consider in a suit to enjoin the validity of an order of this defendant is whether the rates established by the order of this defendant deprive the carriers affected thereby of a fair and reasonable return upon the
2285 property employed by such carriers in the transportation subject to said order, and there is no allegation, or testimony

supporting such allegation, that the rates prescribed by this defendant are confiscatory or deprived complainants of any right under the Constitution of the United States.

5. For that there is no allegation in the bill or any testimony tending to show that the rates prescribed by this defendant are confiscatory.

EDWIN W. SIMS,
LUTHER M. WALTER,
Solicitors for Defendant, Interstate Commerce Commission.

(Endorsed:) Filed June 23, 1909. H. S. Stoddard, Clerk.

2286 And on the same day to-wit: on the twenty-third day of June, 1909, there was filed in the clerk's office of said court in said entitled cause, a certain Motion in words and figures following to-wit:

2287 *Motion to Adopt Certain Propositions of Law.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.
vs.

INTERSTATE COMMERCE COMMISSION.

Now, at the conclusion of all the evidence herein, comes defendant, Interstate Commerce Commission, by its solicitors, and moves this Honorable Court to adopt as its conclusions the following propositions of law:

1. Prescribing rates for transportation in the future by common carriers subject to the Act to Regulate Commerce is a function legislative in character.

2. Congress lawfully may confer and has conferred upon the Interstate Commerce Commission the right, after a full hearing upon complaint, to prescribe in lieu of rates which the Commission finds to be unjust and unreasonable, rates as maxima which are, in the opinion of the Commission, just and reasonable for transportation upon traffic and between points embraced within the complaint before the Commission.

3. The authority of the Commission to change existing rates of transportation is confined to such rates as are complained of
2288 in accordance with section 13 of the Act to Regulate Commerce.

4. Every presumption of validity attaches to an order of the Commission and the burden of showing that the rates established by the Commission are confiscatory is upon the carriers against whom the order runs.

5. The determination by the Interstate Commerce Commission that a given rate is just and reasonable when applied to transportation in the future is a determination of fact by that Commission and will not be inquired into by this Court, unless it be alleged and clearly shown that the action of the Commission is without regard to the statute, is due to a mistake or results in confiscation of the carriers' property in violation of the Constitution of the United States.

6. That the Commission did not reduce the rate on all traffic without regard to origin or without regard to destination, carried between the same points as those named in the order of the Commission, is wholly immaterial and is not a proper subject of inquiry in this Court in a suit brought to enjoin the enforcement of an order of the Commission.

7. The carriers, complainants herein, can not be heard in this Court upon the contention that the order complained of gives an undue preference to the shipper or consignee of traffic, from the seaboard, of the first five classes or operates as an undue prejudice or disadvantage to shippers or consignees of similar traffic, from points intermediate to the seaboard territory and the Mississippi River to the Missouri River cities as a point of destination in each case. Even if the carriers were entitled to raise that question, they can not do so in this case because there is no allegation or testimony to show that the carriers can not reduce the rates between the Mississippi River and the Missouri River upon the first five classes when shipped from Central Freight Association territory or points west of the seaboard territory to the same destination, without being compelled to carry traffic under rates which are confiscatory.

8. The action of the Commission upon questions of fact, 2289 unless constitutional rights be involved, is conclusive. We agree with the language of Judge Taft, writing the opinion for the Circuit Court of Appeals, consisting of Harlan, Circuit Justice, Taft, and Lurton, Circuit Judges, in the case of *East Tennessee V. & G. Railroad Co. v. Interstate Commission* (99 Fed. Rep. 52), as follows:

"It has been suggested that traffic managers are much better able, by reason of their knowledge and experience, to fix rates and to decide what discriminations are justified by the circumstances than courts. This can not be conceded so far as it relates to the Interstate Commerce Commission, which, by reason of the experience of its members in this kind of controversy and their great opportunity for full information, is, in a sense, an expert tribunal; but it is true of the federal court."

9. This Court will not either hear or determine the rights of the complainants upon any state of facts which were within their knowledge and which they failed and neglected to present before the Interstate Commerce Commission at the time of the hearing of the Burnham-Hanna-Munger complaint, nor on account of any facts, matters or things which may have arisen since said hearing without first, by an application for rehearing, having presented such facts and matters to the Commission, as there does not appear any reason

why any of such matters and things could not be or were not presented to the Commission.

10. Evidence which is offered for the first time in a suit to enjoin the order, in the absence of a showing that such evidence is newly discovered or could not have been presented to the Commission in the hearing before it on the complaint out of which the order grew, is inadmissible.

11. This Court may lawfully inquire into the validity or lawfulness of an order of the Commission where there is sufficient allegation or showing of fraud or mistake.

2290 12. The only proper or permissible parties in a suit to enjoin an order of the Commission are those carriers against whom the order runs, as complainants, and the Interstate Commerce Commission as defendant.

13. Even if the intervening common carrier petitioners could, in any circumstances, be properly parties complainant, they can not in this case be permitted to be heard, for the reason that they have been guilty of laches in that they and each of them failed in due season to petition the Interstate Commerce Commission for a right to be heard upon the matters involved in the Burnham-Hannamunger complaint. They should have appeared, if they desired to be heard, before the Commission's order was entered. In the absence of any application to the Commission and inasmuch as the order is not effective by its terms against said petitioners, they have no right to become parties complainant in a suit to enjoin in this Court.

14. The intervening shipper petitioners as co-complainants have no right to become parties complainant in this suit, because of their laches in filing the petition of intervention; but waiving the laches of said petitioners it is manifest that this Court can not permit intervention by shippers, whose rights are not affected by the order of the Commission and whose only interest, if any, is that competitors of petitioners ship under the reduced rates ordered by the Commission. If said intervening petitioners have any complaint to make against the order of the Commission, it should be made direct to the Commission in accordance with the provisions of Section 16 A of the Act to Regulate Commerce, either by petition for rehearing or otherwise.

15. The complainants before the Commissioner are not proper or permissible parties defendant in a suit to enjoin the order of the Commission. Having been successful in their complaint before the Commission, the true intent of the statute is that any defense that is to be made to such order when attacked in the courts is to be made by the Commission. It does not comport with the true intent
2291 of the statute that any and all persons who have any interest, no matter how remote, in the enforcement of the order of the Commission should be permitted to appear and be heard in this Court unless the order of the Commission be directed specifically against such parties.

16. To allege that transportation of traffic on rates prescribed by the Commission will not afford fair compensation or will entail a

loss or that the same are unreasonably low or that the same are unjust or unreasonable, is not such pleading as will give this Court jurisdiction to inquire into the lawfulness or validity of an order of the Commission fixing rates for the future. Such allegations are but the mere conclusions or expressions of views by the pleader. The ultimate facts must be pleaded in the bill so that from the face thereof the Court can determine, if supported by proper evidence, that the order of the Commission takes the property of the carrier without due process of law.

17. The Interstate Commerce Commission was created by Congress, and authorized and required to execute and enforce the provisions of the Act to Regulate Commerce. So long as it acts within the sphere of its powers and its duties, this Court will accept its orders as entitled to very great weight. This Court can not substitute its opinion as to what the facts show for that of the Commission, so long as there are any material facts in support of the findings of that Commission.

18. Carriers lawfully may provide for a charge from a point of origin on one line to a point of destination on another, which charge shall cover the transportation from consignor to consignee. Carriers lawfully may publish tariffs of rates or charges applicable on through business for that portion of the haul over the particular carrier's line. Such separately established rate applicable on through business may be reduced by the Commission if, in its opinion it be unjust and unreasonable for the service rendered.

19. That business has been built up through a long course of years under an existing system of making rates is not a bar to a change in the system of making rates. The Act to Regulate Commerce was enacted to remove inequalities and discriminations and to secure equality of treatment and reasonable charges to all. Where necessary to secure just and reasonable rates or to remove undue and unreasonable preference or charges, the Commission may change the existing method of rate-making so as to conform to the statute. That the carriers operating from Chicago to the Missouri River published a tariff of 60 cents applicable on first class business moving from the Mississippi River to the Missouri River upon all business not carried on joint through rates from point of origin to point of destination is no bar to the Commission reducing that rate as applicable to certain business. The Commission may reduce that rate upon whatever traffic it finds the existing charge as applied is unjust and unreasonable.

20. Through rates are as a rule less than the sum of the locals, and this is true whether the through route is over the line of one or more carriers.

EDWIN W. SIMS,
LUTHER M. WALTER,
Solicitors for the Defendant,
Interstate Commerce Commission.

2293 And on the same day to-wit: on the twenty-third day of June, 1909, being one of the days of the Regular December Term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohl-saat, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

2294 *Order of June 23, 1909, Cause Taken under Advisement.*

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.
vs.

INTERSTATE COMMERCE COMMISSION.

Now come the parties by their solicitors and this cause is set down for hearing on pleadings and proofs, and the Court having heard the same and not being sufficiently advised, takes time to consider.

2295 And afterwards to-wit: on the twenty-fourth day of August, 1909, there was filed in the clerk's office of said court in said entitled cause, a certain Opinion in words and figures following to-wit:

2296

Opinion.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.

v.

THE INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, the Atchison, Topeka and Santa Fe Railway Company, the Chicago and Alton Railroad Company, the Missouri Pacific Railway Company, the Missouri, Kansas and Texas Railway Company, the St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company, Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit, and Sherwin-Williams Company, of Cleveland, Interveners as Co-complainants.

Burnham, Hanna, Munger Dry Goods Company et al., Interveners as Co-defendants.

2296-2

In Chancery. No. 29472.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, THE Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company and Wabash Railroad Company

v.

THE INTERSTATE COMMERCE COMMISSION.

Appearances in No. 29247:

W. D. McHugh and Colin C. H. Fyffe for complainants and intervening co-complainants.

Edwin W. Sims, United States attorney, and Luther M. Walter, special assistant United States attorney, for defendant.

John H. Atwood and John L. Webster for intervening co-defendants.

Appearances in No. 29472:

William D. McHugh and S. A. Lynde for complainants.

Edwin W. Sims, United States attorney, and Luther M. Walter, special assistant United States attorney, for defendant.

Before Grosscup, Baker, and Kohlsaat, Circuit Judges.

Opinion of the Court.

GROSSCUP, Circuit Judge, delivered the opinion:

The bill in No. 29247 is to restrain the Interstate Commerce Commission from putting into force an order entered June 24, 1908, relating to joint rates from the Atlantic seaboard to the Missouri River. Since the filing of the bill six railroads, other than the complainants, have intervened; as also nine individuals and corporations, representatives of the trade and manufacturing interests of St. Louis, Chicago, Milwaukee, Detroit, and Cleveland. To defend the order, certain commercial and manufacturing firms in Missouri River cities have also intervened. Indeed, the contest, in its larger aspect, is a contest, not so much between the shippers and the railroads as between the commercial and manufacturing interests of the Missouri River cities and of the Atlantic seaboard on the one part (their interests being identical) and the commercial and manufacturing interests of what is known as the Central Traffic territory (the territory west of Buffalo, Pittsburg, and Parkersburg, and east of the Mississippi River) on the other part.

2296-3 The bill in No. 29472 is a bill to restrain the Interstate Commerce Commission from putting into force an order entered on the 2d day of March, 1909, on complaint of George Kindel, a manufacturer of Denver, Colo., relating to joint rates from Chicago and St. Louis to Denver; the question raised, in its larger aspect, being again a question not so much between the shippers and the railroads as between the commercial and manufacturing interests of Denver and of the territory east of the Mississippi River on the one side and the commercial and manufacturing interests of the Missouri River cities on the other.

Case No. 29247 is on final hearing, while case No. 29472 is upon a motion for a temporary injunction upon the bill and a demurrer thereto. In the latter case certain affidavits were filed which, in view of the conclusion to which we have come, it is unnecessary to consider.

The joint rate now in force from the Atlantic seaboard to the Missouri River, on first-class matter, is \$1.47 per 100 pounds. The proposed reduction by the Commission is to \$1.38 per 100 pounds. The through rate now in force on the same matter from the Atlantic seaboard to the Mississippi River is 87 cents per 100 pounds, which, plus the through rate from the Mississippi River to the Missouri River (60 cents per 100 pounds) makes the same total, \$1.47 per 100 pounds, as the joint rate from the Atlantic seaboard to the Missouri River. It is not proposed by the Commission that these through rates, or either of them, should be reduced. On the contrary, the Commission

proposes to retain them, to the end that the manufacturers and jobbers on the Atlantic seaboard may deliver their goods to the Missouri River cities on a joint rate 9 cents less per 100 pounds on first-class matter (and a corresponding differential upon second, third, and fourth class matter) than would be done if the goods, or (in the case of manufacturing) the raw material going into the goods, were first sent to the cities in the Mississippi River territory and then resent from those cities to the Missouri River cities.

The joint rate now in force from Chicago to Denver on first-class matter per 100 pounds is \$2.05, and from St. Louis to Denver \$1.80. The proposed reduction by the Commission is to \$1.80 in the Chicago rate and \$1.62 in the St. Louis rate—the through rates, however, from Chicago and St. Louis to the Missouri River cities, and from the Missouri River cities to Denver, to remain unchanged—the effect of which will be that the manufacturers and jobbers to the eastward of the Mississippi River may deliver their goods to Denver at a joint rate of 23 cents less per 100 pounds on first-class matter—and a corresponding differential on second, third, and fourth class matter—by way of St. Louis, and approximately the same by way of Chicago, than would be done if the goods, or, in the case of manufacturing,

the raw material, were first sent to the cities along the Missouri River and then resent from those cities to Denver,

from which it is apparent that, whatever may be the principle on which these orders are based, the effect will be, by means of the differentials named, to protect to a certain degree the Missouri River jobbers and manufacturers within a given zone of territory against the jobbers and manufacturers in the Central Traffic Association territory; and to protect to a certain degree the Denver jobbers and manufacturers, within a given zone of territory, against the competition of the Missouri River jobbers and manufacturers; as also to open up to the Atlantic seaboard, in its trade with both the Missouri River and the Denver zones of territory, the advantages contained in the differentials against the competition of both the intervening Central Traffic Association territory and the Missouri River territory. That such a power, exercised upon any principle outside of cost of carriage, or the conditions created by competitive carrying lines, or any other natural conditions, and exercised with substantial effect—power artificially to apportion out the country into zones tributary to given trade centers to be predetermined by the Commission, and nontributary to others—would be a power essentially different in principle from the mere power of naming rates that are reasonable, is, we think, too clear on its face to render discussion necessary.

There is no testimony that the cost of carriage from the Atlantic seaboard to the Missouri River, or the cost of carriage from Chicago and St. Louis to Denver is less on through traffic than on traffic that goes first to the Mississippi River and then is reshipped to Missouri River cities, or that goes first to Missouri River cities and then is reshipped to Denver. On the contrary, it was stated at the argument and not controverted, in the case of shipments from the Atlantic seaboard to the Missouri River cities, that the cost of service is not greater on reshipments than on through shipments. Cost of service,

therefore, is neither the principle upon which the Commission's orders are founded nor the purpose for such orders.

There are no natural competitive carrying lines, such as the water lines that affect rates to Minneapolis and St. Paul, or to the Great cities, or to the Pacific coast, that call for or suggest a less joint rate in either of these cases than the sum of the two through rates. Indeed, no suggestion, based upon competitive lines of carriers, or upon increased cost of service, or upon any other consideration than the one hereafter named, is offered as a reason for the orders of the Commission involved.

What then is the principle upon which the orders of the Commission are based; what their purpose; and what will be their effect? Upon the answer to these questions the power of the Commission to make the orders turns.

2296-5 The trade centers of the country as they exist today have grown up as the result of conditions, some of them natural and some of them more or less artificial. For many years the Mississippi River was the country's frontier. To reach it the eastern roads were built and consolidated, and at the Mississippi River they stopped. In time the frontier was pushed to the Missouri River. To reach that country the western roads were built; from the Mississippi River they started; and at the Missouri River all the earlier ones stopped. The Mississippi River thus became a dividing line between the eastern and the western system of carriers, and on that account, perhaps more than for any other reason, became what is known as a base line for the fixing of through rates; that is to say, through rates from the Atlantic seaboard were made to the Mississippi River somewhat less than the sum of the intermediate local rates, and through rates were made from the Mississippi River westward somewhat less than the sum of the intermediate local rates; no rate, however, through or joint, before the orders here involved, having been made that ignored the Mississippi River as the base line. Subsequently, the Missouri River became a dividing line between the railroads east of it and the railroads west of it—becoming at the same time a base line for the fixing of through rates; that is to say, through rates were made to the Missouri River, from the eastward, somewhat less than the sum of the intermediate local rates between the rivers; and through rates were made from the Missouri River westward somewhat less than the sum of the intermediate local rates; none of the rates, however, ignoring the Missouri River as the base line.

That the purpose of the Commission, in the orders involved, is to annul these conditions upon which the trade centers of the country have grown up, interposing a rate-making principle entirely different, is not controverted. That principle, as stated by the Commission itself, in its most general terms, is that the rates "through" on the basing lines—that is, from any point east of such basing line to any point west of such basing line—shall always be less than the sum of the rates from the initial point to the basing line and from the basing line on to the point of delivery. As thus stated, the principle abstractly, may not be wrong. We are not prepared to say that the Commission has not power to enter upon a plan looking toward

a system of rates wherein the rates, for longer and shorter hauls, will taper downward according to distance, provided such tapering is both comprehensively and symmetrically applied—applied with the design of carrying out what may be the economic fact that, on the whole, it is worth something less per mile to carry freight long distances than short distances.

2296-6 But it does not follow that power of that character includes power, by the use of differentials, to artificially divide up the country into trade zones tributary to given trade and manufacturing centers, the Commission, in such case having, as a result, power to predetermine what the trade and manufacturing centers shall be; for such a power, vaster than any that any one body of men has heretofore exercised, though wisely exerted in specific instances, would be putting in the hands of the Commission the general power of life and death over every trade and manufacturing center in the United States.

Now, is it this power—the one last stated—that the Commission, in the orders before us, is actually exerting? And will the effect of these orders be to put such power, on the part of the Commission, into substantial effect? These are the questions on which these cases turn.

That the Commission, in the orders under consideration, is entering upon the exercise of such power, and intentionally doing it, is, we think, clearly shown:

(a) By the express avowal of the Commission, in the body of its opinion in case No. 29247 (giving the reasons why the inter-river rates are not reduced). The occasion that gave rise to the order in favor of the Missouri River cities was the complaint that St. Paul and Minneapolis could invade territory naturally tributary to the Missouri River cities, because of the lower joint rate from the seaboard to the Twin Cities than from the seaboard to the Missouri River cities; and one of the purposes of the Commission in reducing the rate between the Mississippi and the Missouri rivers, as part of the seaboard-Missouri River joint rate, undoubtedly was to ameliorate that disadvantage. But that an additional purpose was to protect the Missouri River cities against the competition of the trade and manufacturing of the Central Traffic Association territory, and to give to the Atlantic seaboard advantages in rates over Central Traffic territory, is clearly set out in the opinion, as follows:

“that if the local rates between the Mississippi and Missouri rivers were reduced, it would give the same degree of advantage to all the producing and distributing centers on and east of the Missouri River, and their relative advantages and disadvantages would not be changed;”

and also by this further paragraph in the opinion:

“It seems patent that any change in the rates east of the Mississippi River, even if warranted, would fail to accomplish what the complainants desire, because whatever of advantage accrued therefrom to the Missouri River cities would accrue to a like degree or extent to their principal competitive commercial centers;”

(b) By the fact that there was no inquiry by the Commission respecting the "reasonableness" or "unreasonableness" of the rate between the Mississippi River and the Missouri River, or 2296-7 between the Missouri River and Denver, other than on the zone theory of apportioning trade—no attempt to arrive at a rate that would be reasonable, other than on the postulate that there must be a differential against the Central Traffic territory in favor of the Missouri River cities, and against the Missouri River cities in favor of Denver; and by the fact,

(c) That the Commission, under circumstances inviting explanation, does not disavow its claim of power or the effect of these orders. The excerpt quoted from the Commission's opinion in the Missouri River rate hearing was used as the ground upon which the preliminary order in No. 29247 was chiefly based. Since that time the Commission has spoken in the Denver rate hearing and also in its annual report. In neither has there been a disavowal of the power said to be claimed or the effect said to be produced; and

(d) By the differentials themselves—differentials in both cases that bear no indication whatever that they are parts of a comprehensive and symmetrical tapering system based on the possible economic fact that, on the whole, it is worth less per mile to haul long distances than short distances; but, on the contrary, differentials that are applied at given lines abruptly and decidedly—just so adjusted as to protect the one zone against the competition of the other. Indeed, it is our judgment that the Commission believes itself possessed of this power—claims such power as belonging to it under the law, and as beneficial to the trade and commerce of the country—and that if the question were put plainly to that able body of men there would be no effort to conceal their ultimate purpose under any pretext that in the orders under review they were dealing merely with the "reasonableness" or "unreasonableness" of the specific rates involved.

Such being, in our judgment, the principle on which the orders were actually based, and the purpose of the Commission, the question remains, What is their substantial effect? Much testimony on that question has been introduced. A manufacturer of fiber cans in Detroit testifies that his principal competitors are on the Atlantic seaboard; that from the East he gets his raw material, paying regular railroad rates; that considering the rates as they now are, the eastern man gets to the Missouri River country on an even basis with him; but that if the differential in the order is applied, it will give to the seaboard, as the place for the manufacturing of cans, an advantage in trade with the Missouri River cities that will put the Detroit manufacturer, so far as that field is concerned, out of business. "Business is done on such a close margin that that would control the business. He (the eastern competitor) would get it and I would lose it." In other words, in 2296-8 such manufactures, where the Central Traffic Association territory must bring its raw material, or a substantial part of it, from the East, with no differential in their favor, the differential that the Commission applies, in the orders before

us, would make it commercially disadvantageous to have the manufactory located in Central Traffic Association territory. Or, as Mr. Hill tells us, respecting the application of zone rates in Australia, the centers of manufacturing and trade would build up at the ends of the lines only.

The Sherwin-Williams Company, manufacturers of varnish, paint, etc., at Cleveland, say:

"Raw material brought into the seaboard and shipped west to Chicago and the Mississippi River is on the basis of fourth-class rate. The same is true with regard to the manufactured product. Were the manufacturers on the seaboard allowed the differential of 4 cents between the rivers, I can see no other way but what it would actually close the varnish factories west of Buffalo if such a combination were strong enough or cared to control the entire output."

And again:

"Assuming our profits were 20 cents a hundred pounds and the new adjustment occasioned a diminution of profits to 16 cents, I think our establishment would be wiped out of business. There is no question but that the eastern manufacturers would fill the territory with their salesmen and get the business until you could not do business at a profit."

Whitelaw Brothers, of St. Louis, jobbers and commission merchants in heavy chemicals, say that should an attempt be made to add to the advantage that Missouri River cities already get in the way of carload commodity rates—2, 3, 5, 7, or 9 cents a hundred more—the result would be that they could not do business in the Missouri River country; "that 2 cents a hundred in the lot of merchandise that we handle is our profit, and we don't always get it."

Other witnesses testify to the same effect; many of them admitting, however, that the differential would not wipe out their profits; but all of these insisting that the very fact that their seaboard competitors could say to the merchants in the Missouri River country that the seaboard had an advantage of 9 cents in freight over the intervening Central Traffic Association territory, would create such an impression upon the minds of the Missouri River dealers as to put the manufacturers in the intervening territory to a great disadvantage.

It was said at argument that in none of these cases was the entire profit wiped out—that in many cases, on the contrary, in Central Traffic territory, owing to natural advantages, the profits even then would remain larger to the Central Traffic territory manufacturer than to his seaboard competitor. But that is not the point of the inquiry. The inquiry is not, Are the trade and manu-

2296-9 facturing of the intervening zone put out of competition; but are they, by this artificial differential, put at a disadvantage in competition that they otherwise would not suffer? For unless the Commission has power over the trade and manufacturing of the country, every commercial house and manufacturer is entitled to all the advantages that their natural situation gives them. And why, unless the effect is a substantial one, was it sought by the

initiating commercial and manufacturing interests of the Missouri River cities, and why is it asked for by the manufacturing interests of the seaboard? Is it not enough, upon the question presented to us, that the change is wanted by those who know better than we do its value to them, and is resisted by those who know better than we do its disadvantages to them? Indeed, but for the consciousness of the Commission that by such differentials natural advantages in the way of competition could be overcome, these orders would never have been entered, for their very purpose was to countervail the differentials that the Twin Cities, by reason of their natural situation, had been obtaining—differentials only a little larger than the ones here involved.

That being the case, the question recurs, What power on this subject did Congress intend to confer upon the Commission? The manufacturers of the Atlantic seaboard say that inasmuch as their competitors in the Central Traffic Association territory are in closer proximity, both to the consumers of the west and to the raw material originating in the west, as in the case, for instance, of the shoe and leather industry, it is only fair that a rate differential may be interposed that, to some extent, will counterbalance such disadvantages. Did Congress intend, in the interstate-commerce act, that this counterbalancing power should be given to the Interstate Commerce Commission? The merchants and jobbers of the Missouri River cities claim that as against the merchants and jobbers of St. Louis, Chicago, and Milwaukee, the jobbing centers next contiguous to them (and it appears that the jobbing trade is largely dependent upon contiguity), they are fairly entitled to the trade of the Missouri River territory; and likewise, the merchants and jobbers of Denver, as against the merchants and jobbers of the Missouri River cities next contiguous to them, claim that they are fairly entitled to the trade of the territory tributary to Denver. Did Congress intend to confer upon the Commission, through its supervision over rates, power to determine the fairness of such claims, and to carry out such determination? The protective-tariff policy of the nation, as a nation, against the competition of alien nations, has been carried out by Congress in the imposition of rates or burdens upon imported articles. Did Congress intend in the interstate-commerce act, to extend that principle so as to have it protect given zones into which the country, intra-territorially, might be divided, against the natural advantages of contiguous zones, to be effectuated by the fixing of carrier rates as the general protective principle is effectuated by the fixing of customs rates by Congress? If so, the first and necessary step would have been to have conferred upon the Commission power, full and express, to fix rates.

But when we come to the interstate commerce act we find that Congress has left the fixing of rates initially, not with the Commission, but with the railroads. The sole power conferred upon the Commission is, in any given case of a rate being found unreasonable in the amount charged, or unduly discriminatory between individuals or localities, to command the carrier to desist, and, as a corrective, to name a rate in the place of such given rate that will not be un-

reasonable or unduly discriminatory. These provisions, as we read them, were designed, so far as localities are a factor in the question, to prevent localities from being built up or destroyed by artificial rates, not to continue the policy that, by artificial rates, builds up and destroys localities—to take away from the railroads the power of life and death over the manufactures and commerce of given localities, not to transfer such power to the Commission or any other single body of men. Possibly there remains to the railroads, as the law now stands, power to lower the rates “to what the traffic will bear”—temper the rates to peculiar conditions—in the case of some new promise of commerce struggling to get upon its feet; moved thereto, as a matter of course, by their judgment that what may appear to be largely a matter of benevolence now will turn out to be a sagacious and profitable planting of seed. But surely Congress did not intend to invest the Commission with power to compel the railroads to make such ventures. Nor could the railroads themselves enter upon them as parts of a scheme to rearrange trade zones and trade centers. Indeed, it was largely upon the complaint that such power was the exercise of arbitrary power, and was being usurped by the railroads, that led Congress, in the first instance, to enact the interstate commerce act; and until Congress speaks with more certainty than it has already spoken, we do not feel at liberty to read into the act an intention that the manufacturers and commerce of any given locality have, by the enactment of the interstate commerce law, simply been changed from the keeping of the railroads to that of the Commission.

The right of the courts to review these orders is challenged, and *Union Bridge Company v. United States*, 204 U. S., 364, is urged upon us as a ruling of the Supreme Court of the United States that the finding of the executive power of the Government, when such finding is constitutionally committed to the executive power by law, shall not be reviewed by the courts. With that case we have no dispute. In that case the act clearly put it within the power 2296-11 of the Secretary of War to determine whether the bridge involved was an unreasonable obstruction of the Allegheny River; and the bestowal of that power on the Secretary of War was held to be constitutional. The whole question, therefore, in that case was a question of fact, constitutionally committed by the law to the executive department of the Government.

But in the case here, the question involved is not a question of fact, but a question of power—the question is not whether, by the application of correct principles, a given rate has been decided by the Commission to be unreasonable, but whether the principles applied are themselves within the power of the Commission; for Congress did not intend to confer upon the Commission power to do by indirection what it could not directly do—did not intend to include within the word “reasonable” every power over the trade and manufacturing of the country that the Commission should determine it was reasonable that it (the Commission) should possess.

Again, it is urged that though the effect of the order in the Missouri River case is to discriminate in favor of the Atlantic sea-

board and the Missouri River cities against the Central Traffic territory, and in the Denver case in favor of Denver and the east Mississippi River country against the Missouri River cities, the discrimination is not "undue" within the meaning of the interstate commerce act; and that therefore the courts have no power to enjoin. The difficulty with this argument is that it draws no distinction between the power that the Commission is actually given—a power that carries with it, as a necessary incident, the right to make discriminations if they be not "undue"—and a power that the Commission is usurping; no distinction between the case where the question is whether a lawful power is unlawfully exercised, and a case where the question is, is there any law at all for the power claimed. Were the Commission exercising its power under the interstate commerce act, attended with discrimination, the question would be whether the discrimination was "undue." But here the question is not one of discrimination, due or undue, under the interstate commerce act; but has the Commission any power to do what it is seeking to do? No question of discrimination being "undue" arises, except in the wholly different sense of whether the advantages and disadvantages artificially accruing to the localities affected are substantial enough to call for the interposition of a court of equity.

In No. 29247 a permanent injunction will be granted.

In No. 29472 the temporary injunction prayed for will be granted.

It must be understood, however, that these orders of the Commission are enjoined solely because, in our judgment, they lay upon the Commerce and manufacturing of the localities affected, an artificial hand that Congress never intended should be put 2296-12 forth, and therefore are outside the power conferred on the

Commission by Congress; for with the question of a reduction in rates, or a readjustment of rates, from which such artificial results have been eliminated, we are not now dealing.

Kohlsaat, *Circuit Judge*, concurs.

BAKER, Circuit Judge (dissenting):

By the Hepburn Act the following provision, among others, was added to the interstate commerce law:

"It shall be its (the Commission's) duty, whenever, after full hearing upon a complaint, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers—are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial—to determine and prescribe what will be the just and reasonable rate or rates to be thereafter observed in such cases as the maximum to be charged. All orders—shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction."

Complainants are common carriers whose rates on certain traffic are directed to be reduced by the order complained of. Two grounds

for injunction are alleged. One is that the new rates are confiscatory. There is no proof whatever that the rates which the Commission prescribed as just and reasonable are not sufficient to pay the cost of handling that traffic, to cover that traffic's full proportion of maintenance and overhead expenses, and to return to the carriers an ample net profit. Furthermore, proof is lacking that, if the carriers should reduce other rates to correct what they claim is the maladjustment caused by the Commission's order, the reduction would not leave them abundant net returns. For the purposes of this hearing, therefore, it must stand as an agreed fact that the present reduction is neither directly nor indirectly obnoxious to the charge of taking private property without just compensation.

Discrimination is the other ground adduced by complainants. But the alleged discrimination is not against the carriers; it is against certain classes of traffic of Chicago and St. Louis and other places similarly situated. If it be true that loss or injury will be inflicted by the Commission's order upon Chicago and St. Louis shippers, they, if any, are the ones to complain. Nothing is added to the carriers' case by attempting to count upon the grievances of others.

There is only one aspect that I can discover in which the carriers' case remains for consideration. If the action of the Commission is outside of its lawful powers—if the grant of the rate-making power is itself void, or if, the grant being valid, the present action of the Commission is not within the grant—the order complained of is the act of intermeddlers and trespassers. And on that basis the threatened invasion of the carriers' revenues would require an injunctive decree, whether the reduction would be confiscatory or not, or whether the interference would cause discrimination or not.

Certain shippers have been permitted to intervene and adopt the complainants' allegations regarding discrimination. I am doubtful of their right to stand in these suits as complainants. It is unnecessary, however, to consider that question, for on the evidence they have failed to establish preponderantly and clearly that the alleged discrimination is undue discrimination. Take the Detroit fiber-can maker for example. He pays 19 cents a hundredweight on the raw material into Detroit and 56 cents a hundredweight on the finished product out to the Missouri River cities. His New York competitor pays 17 cents on the raw material into New York and 76 cents on the finished product out to the Missouri River cities. The Commission's reduction of 5 cents a hundredweight, instead of putting the Detroit maker under the heel of his eastern competitor, would merely deprive him of a small part of the existing advantage in his favor. On the basis of last year's business, the Detroit man might suffer (if the eastern maker should give Missouri River purchasers the whole benefit of the reduction) a diminution in his \$27,000 net profits to the extent of \$1,500—about five-eighteenths of that part of the net profits attributable to the Detroit man's advantage in freight rates. In the other instances relied on a weighing of the testimony leads to the same general conclusion, namely, that if the carriers, of their own initiative, had made the reductions in question,

the shippers in Central Traffic territory could not establish, by the evidence in this record, that there was undue discrimination. If, however, these intervenors are proper cocomplainants, they are entitled to have their existing advantages protected from an invasion that has no warrant in law. But since that is the same question that arises on the bills of the complainant carriers, it is immaterial whether the intervenors have any better standing than that of friendly advisers of the court.

Is the Commission's order void for want of jurisdiction to make it? The question is not whether a lawful power or authority has been shown to have been wrongly exercised, but whether there is any law at all for the power or authority claimed and exercised.

No contention is made that the portion of the Hepburn Act herein above quoted is void on account of its being an unconstitutional delegation of legislative power. I assume, in the absence of specific assault, that the precedents have virtually placed that question beyond profitable debate. If Congress can not constitutionally make a general declaration that the rates shall be reasonable and not unjustly discriminatory, and then trust an executive body to hear evidence and decide questions of fact respecting reasonableness and just discrimination, the power of Congress over rates would be worthless, for it would be utterly impracticable for Congress itself to make enactments to cover the specific instances.

No contention is directly made that the rate provision of the Hepburn Act is void for indefiniteness and uncertainty. A direct answer sufficient for present needs, I think, would be that the instructions to the Interstate Commerce Commission are as definite and certain as those given by state legislatures to state commissions in commerce acts that have been upheld by all the courts. But, that the rate provision of the Hepburn Act is void for indefiniteness and uncertainty may indirectly be asserted in and by complainants' proposition that the particular way in which, or ground upon which, the Commission proceeded in these cases to reduce rates is not a way or ground included among those ways and grounds along and upon which Congress authorized the Commission to act.

I find in the rate provision no naming of specific grounds upon which the Commission must base its action. Such a naming would of course exclude all other grounds except those of the same nature. It is true that the initiative in rate changing remains with the carriers, and that the Commission can take jurisdiction only of those rates that are complained of and can change such rates only after a full hearing. But neither can courts, of their own initiative, investigate and decide controversies. Limitation of procedure by which a subject-matter may be reached is no limitation of the power to deal with the subject-matter after it has been reached in accordance with the prescribed procedure. And I believe that the judicial department should not claim the exclusive right to make wrong decisions which shall be impervious to collateral attack.

Going further and assuming that it is proper to inquire into the Commission's reasons for making these orders, I do not find that complainants' criticisms are justified.

Taking the opinion of the Commission in the Missouri River case in its entirety, it seems fairly clear to me (though certain parts removed from their context may create a doubt) that two issues were separately considered and passed upon. The first was the reasonableness of the \$1.47 Seaboard-Missouri River rate in and of itself. The fact that the \$1.15 rate from the Seaboard to St. Paul and the Chicago-Kansas City rate of 47 cents on traffic destined to Texas common points were profitable rates, was considered as evidence that on the basis of cost of operation the Seaboard-Missouri 2296-15 River rate was "unreasonably and unjustly high." The other issue was what, if any, reduction could be made "without doing injustice elsewhere." In substance, it was found that the St. Paul rate was influenced by lake competition, and the Texas rates by gulf competition; that it would not be fair to the Twin Cities to deprive them of that part of the difference (all the difference except 9 cents) which was fairly attributable exclusively to lake competition; and that the reduction to western jobbers could be made, with probably great benefit to the prosperity of the country as a whole by reason of the extension and increased usefulness of centers of distribution, and without probably unduly affecting the commercial situation of Chicago and St. Louis. In short, it seems to me that the Commission took into consideration all the pertinent facts and circumstances affecting the questions presented by the complaints before them.

If, however, it were conceded that the controlling consideration, without which the rate would not have been changed, was the Commission's intention to establish additional basing lines, the orders, in my judgment, would be within the power granted by Congress. One possible system of rate-making would be to adopt the postage method of a uniform charge throughout the whole country irrespective of distance. Another would be to divide the country into zones and adopt a uniform charge from any place within one zone to any place within another zone irrespective of distance. Another system would be to base the charge absolutely upon mileage. None of these has ever become established on American railroads (though I believe the use of any of them, because not expressly denied, was open to the Commission). But if any serious meaning is to be attributed to the rate-making provision in the Hepburn Act, there should be no doubt that Congress did not intend to deny to the Commission the right to use the very system which the railroads have developed and established in this country.

While cost of service must not be lost sight of in any system of rate-making, in the American system the prime factor has been the character of the merchandise and the volume of the traffic therein; that is, the prime factor has been the value of the service to commerce rather than the cost of the service to the carrier. In other words, the prime factor has been to charge what the traffic will bear; that is, not to charge what the traffic will not bear. For example, the discovery of natural gas in Indiana led to the establishment of steel, glass and tin-plate mills, which could be operated profitably on account of the cheap fuel. When the natural gas failed, those mills would have been compelled to quit on account of the high

the shippers in Central Traffic territory could not establish, by the evidence in this record, that there was undue discrimination. If, however, these intervenors are proper cocomplainants, they are entitled to have their existing advantages protected from an invasion that has no warrant in law. But since that is the same question that arises on the bills of the complainant carriers, it is immaterial whether the intervenors have any better standing than that of friendly advisers of the court.

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cost of transporting their manufacturing materials, if they had not obtained very cheap coal. The traffic managers of the 2296-16 railroads considered the situation and greatly reduced the rates on coal consigned to those mills, while maintaining the old rates on the very same kind of coal from the very same fields to other consumers in whose cases the carriers' cost of the transportation service was the same. The Indiana Railroad Commission held this not to be an unjust discrimination. This illustration gives a glimpse of the statesmanlike breadth of vision which traffic managers have quite generally employed in building up and maintaining the commerce of the country (and thereby the ultimate interests of their companies).

The principle of considering what the traffic will bear—what rates will best promote traffic as a whole—early led to the establishment of tapering rates. And while in former times competition (or pooling or other arrangement to avoid competition) was influential in determining rates to basing points (places common to two or more railroads) tapering rates invariably developed on the lines separately (in the absence of competition) by reason of the desire to encourage and promote traffic.

The first consolidations of minor lines into main lines from the East terminated at Buffalo, at Pittsburg, and at Parkersburg. Through those cities was drawn the line that separates Trunk Line territory from Central Traffic territory. The next extensions were to Chicago and St. Louis—to the line that separates Central Traffic territory from Trans-Mississippi territory. The rate from New York to Buffalo was less than the rate from New York to Syracuse, say, plus the rate from Syracuse to Buffalo. The New York-Buffalo haul was on one line and the rate structure was built on the tapering plan. But when the new and separate line was extended to Cleveland the rate from New York to Cleveland was likewise made less than the rate from New York to Buffalo plus the rate from Buffalo to Cleveland. And similarly the rate from New York to Chicago was made less than the rate from New York to Cleveland plus the rate from Cleveland to Chicago. The same thing was true of traffic from the Pacific coast, the San Francisco-Chicago rate being less than the sum of the in and out rates of Salt Lake City, Denver, or Kansas City. That is, in considering what rate in relation to distance a commodity could pay consistently with the largest volume and increase of volume of traffic, it was found (railroad economics being empirical) that the tapering plan should, as a general rule, be carried across the separate ownerships and across the dividing lines between "traffic territories."

When the Federal Government in quite recent years began to lay an effective restraining hand upon traffic management, the separately incorporated carriers had not extended the tapering plan across the dividing line between Central and Trans-Mississippi territory.

Rebating was condemned (and may have been stopped). 2296-17 Discriminating in favor of industries or localities in which the carriers were privately interested was condemned (and may have been stopped). That was unjust discrimination. But the just discrimination which traffic managers founded on an untainted

discernment of commercial conditions, growths, relations, and possibilities has never been condemned by Congress. Congress has not indicated any disapproval of the rate system that was actually developed between the Atlantic seaboard and the Mississippi. The presumption is, I think, that Congress desired the development of the tapering system of rates to continue, and expected that the carriers, when the population and purchasing power of the West should have sufficiently increased, would extend the same system beyond, that they had brought to the Mississippi. The river is insignificant as a physical obstacle. The difficulty of arranging through transportation, if not already negligible on account of community of interests and various intercorporate relations would be no greater than it was in the cases of the lines east and west of Buffalo and of Pittsburgh. The initiative has been left to the carriers, but not the ultimate determination. If the carriers have decided that a barrier shall stand till they say otherwise, nevertheless the growth in population and commerce will go on in the West and increasingly call for the removal of the barrier. If, by reason of the carriers' refusal, the Commission is required to act, I believe Congress in the Hepburn Act expressed its intent that the Commission should be free to employ the system of tapering rates (to be applied as a general, not an unalterable, rule); should be free to make the same kind of discriminations that the carriers could lawfully make if they had taken the initiative; should be free to consider the value of the service to the country's commerce rather than merely the cost of the service to the carriers; should be free, while securing to the carriers an ample immediate return, to adjust the rates so as to bring forth the largest volume and increase of volume of the country's commerce as a whole.

Complainants say that such vast power in the hands of the Commission might be used arbitrarily, to the ruin of particular regions or cities. That, of course, is not a conclusive argument that the power does not exist. To allow carefully selected public officers to exercise under the sanctity of their official oaths the same power over cities and regions that the carriers confessedly may exercise, does not strike me as such a monstrous thing. And if dangers appear in the exercise of the grant, I think the remedies lies with the appointive power that determines the personnel of the Commission, and with the legislative power that can at its pleasure amend or repeal the interstate commerce law.

(Endorsed:) Filed Aug. 24, 1909, H. S. Stoddard, Clerk.

2296-18 And afterwards, to-wit: on the thirteenth day of September, being one of the days of the Regular July Term of said court, in the record of proceedings thereof before the Honorable Peter S. Grosscup, and the Honorable Christian C. Kohlsaas, Circuit Judges for the Seventh Judicial Circuit, appears the following entry, to-wit:

2297

Decree of September 13, 1909.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri Kansas and Texas Railway Company, The St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hovieson Company of Milwaukee, Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company of St. Louis, Sprague, Warner & Company, Carson, Pirie, Scott & Company of Chicago, Keniweld Can Company, Parke, Davis & Company of Detroit, and Sherwin-Williams Company of Cleveland, Interveners as Co-Complainants. Burnham, Hanna, Munger Dry Goods Company, et al., Interveners as Co-Defendants.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the order made by the defendant Interstate Commerce Commission heretofore to-wit on the 24th day of June, 1908, in the words and figures as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission having, on the date hereof, made and filed a report containing its conclusions thereon;

2298 "It is ordered, that the defendants, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Northwestern Railway Company, and the Chicago Great Western Railway Company be and they severally are hereby notified and required to cease and desist on or before the 25th day of August, 1908, from charging, demanding, collecting or receiving for the transportation of property between the Mississippi River crossings, East St. Louis to East Dubuque, Ill., inclusive, and the Missouri River cities, Kansas City

and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, or at other points of origin, as specified on pages 3 and 4 of Western Trunk Line Tariff, No. 786 I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, their separately established class rates now in effect between said Mississippi River crossings and said Missouri River cities, which are in cents per hundred pounds as follows:

Classes	1	2	3	4	5
Rates	60	45	35	27	22

And to also cease and desist, on or before said 25th day of August, 1908, from charging, demanding or receiving the above named rates for the transportation of property between the Mississippi River crossing, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, when moving under class rates and when from above described points of origin and destined to Sioux City, Iowa.

"It is further ordered, that said defendants, The Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Northwestern Railway Company and the Chicago Great Western Railway Company, be and 2299 they severally are hereby notified and required to establish and put in force, on or before the said 25th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of property between Mississippi River crossings, East St. Louis to East Dubuque, Ill., inclusive, and the Missouri River cities, Kansas City and St. Joseph, Mo., and Omaha, Nebr., and points taking the same rates, as parts of the through class rates on through shipments originating at the Atlantic seaboard points, taking New York as representative, or at other points of origin as specified on pages 3 and 4 of Western Trunk Line Tariff No. 786, I. C. C. No. 678, or at points taking the same rates, and destined to said Missouri River cities, or to points taking the same rates, class rates in cents per 100 pounds not in excess of the following scale, to-wit:

Classes	1	2	3	4	5
Rates	51	38	30	23	19

"It is further ordered, that the rates herein established shall be applied to the transportation of property moving under class rates between Missouri River crossings, East Burlington to East Dubuque, Ill., inclusive, and Sioux City, Iowa, and points taking the same rates, as parts of the through class rates, on through shipments originating at Atlantic seaboard points, or at other points of origin as specified on pages 3 and 4 of said Western Trunk Line Tariff

No. 786, I. C. C. No. 678, or at points taking the same rates, when destined to Sioux City, Iowa, or to points taking the same rates.

"It is further ordered, that said defendants be, and they are severally hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the said 25th day of August, 1908. The tariffs 2300 in which the rates are given must contain the notation that they are issued under the authority hereby granted, and must refer to the title and number of this case.

"And it is further ordered, that as to all the other defendants herein, the complaint in this proceeding be, and it is hereby dismissed," and any subsequent order or orders extending the time for putting the foregoing order into force and effect, and each and all thereof, be and the same are hereby set aside, annulled and suspended and the enforcement of each and all thereof, be and the same is hereby perpetually restrained and enjoined.

It is further ordered, adjudged and decreed that the said defendant, Interstate Commerce Commission and its members and their agents, servants and representatives, be and they and each of them hereby are perpetually enjoined from enforcing the said order or orders or any of them, and from taking any steps or instituting any proceedings for the enforcement of the said order.

It is considered and adjudged that the complainants have and recover from and of defendant, their costs herein expended, including the sum of \$457.50 advanced by the complainants to the Special Examiner herein, the same being taxed at the sum of \$662.35.

To all which the said defendant, the Interstate Commerce Commission and the intervening co-defendants herein, severally except.

2301 And on the same day to-wit: on the thirteenth day of September, 1909, comes the defendant, the Interstate Commerce Commission, by its solicitors, and file in the clerk's office of said court in said entitled cause, a certain petition for Appeal in words and figures following to-wit:

2302 *Petition for Appeal by Interstate Commerce Commission.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.,
vs.

INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, The St. Louis and San Francisco Railroad Company; A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, Interveners as Co-complainants; Burnham, Hanna, Munger Dry Goods Company, et al., Interveners as Co-defendants.

Petition for Appeal.

The Interstate Commerce Commission, being a bureau or department of the Government of the United States, by Edwin W. Sims, United States Attorney for the Northern District of Illinois, and

Luther M. Walter, Special Assistant to the said United States
2303 Attorney, being thereunto duly authorized, represents that in the decree or order of said Circuit Court, in the above stated case, rendered on the 13 day of September, 1909, there is manifest error to its injury; and, therefore, prays for an order granting an appeal from said decree to the Supreme Court of the United States.

EDWIN W. SIMS,

United States Attorney.

LUTHER M. WALTER,

Special Assistant to the United States Attorney.

(Endorsed:) Filed Sep. 13, 1909. H. S. Stoddard, Clerk.

2304 And on the same day to-wit: on the thirteenth day of September, 1909, comes the defendant, the Interstate Commerce Commission, by its solicitors, and file in the clerk's office

of said court in said entitled cause, their certain assignment of errors in words and figures following to-wit:

2305 *Assignment of Errors by Interstate Commerce Commission.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.,
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Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri, Kansas, and Texas Railway Company, The St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson, and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company, Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, Interveners as Co-complainants; Burnham, Hanna, Munger Dry Goods Company, et al., Interveners as Co-defendants.

Assignment of Errors.

Now comes the Interstate Commerce Commission, by Edwin W. Sims, United States Attorney for the Northern District of Illinois, and Luther M. Walter, Special Assistant to the said United States Attorney, and charges that in the order and decree rendered by said Circuit Court for said District in the above-entitled cause on the 13 day of September, 1909, wherein and whereby said court annulled an order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein there is manifest error to its injury, in this, to-wit:

- 2306 1. Said Circuit Court erred in not dismissing complainants' bill for want of equity.
2. Said Circuit Court erred in not dismissing the bill of complaint, for want of jurisdiction.
3. Said Circuit Court erred in holding that the Interstate Commerce Commission was without power to make the order complained of.
4. Said Circuit Court erred in holding and decreeing that the

order complained of, entered by the Commission on June 24, 1908, was void and of no effect.

5. Said Circuit Court erred in ordering that said order of the Commission be annulled and its attorneys, agents and employees be restrained and enjoined from enforcing the same.

6. Said Circuit Court erred in holding that two of the three Circuit Judges had jurisdiction to enter the decree of the 13 day of September, 1909, annulling the order of the Commission.

7. Said Circuit Court erred in failing and refusing to certify the entire case to the Supreme Court of the United States, in like manner as if taken there by appeal, as provided for in the Act of February 11, 1903, as amended by section 16 of the Act to Regulate Commerce as amended June 29, 1906.

8. Said Circuit Court erred in permitting the Illinois Central Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago & Alton Railroad Company, The Missouri Pacific Railway Company, the Missouri, Kansas & Texas Railway Company, and the St. Louis & San Francisco Railroad Company, to file their intervening petition and become co-complainants herein.

9. Said Circuit Court erred in refusing to sustain defendant's motion to dismiss the intervening petition of the Illinois Central Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago & Alton Railroad Company, the Missouri Pacific Railway Company, the Missouri, Kansas & Texas Railway Company, and the St. Louis & San Francisco Railroad Company.

10. Said Circuit Court erred in permitting A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson & Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, to file their intervening petition and become co-complainants herein.

11. Said Circuit Court erred in refusing to sustain defendant's motion to dismiss the intervening petition of A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson & Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland.

12. Said Circuit Court erred in permitting Burnham, Hanna, Munger Dry Goods Company and others (complainants before the Interstate Commerce Commission) to file their intervening petition and become co-defendants herein.

13. Said Circuit Court erred in refusing to sustain defendant's motion to dismiss the petition of Burnham, Hanna, Munger Dry Goods Company and others (complainants before the Commission) as intervening co-defendants.

14. Said Circuit Court erred in refusing to hold that the only proper or permissible parties in a suit to enjoin an order of the Commission are those carriers against whom the order is directed and the Interstate Commerce Commission.

15. Said Circuit Court erred in holding that there was no inquiry by the Interstate Commerce Commission respecting the reasonableness or unreasonableness of the rates between the *Missouri* River and the Missouri River other than on the zone theory of apportioning trade.

2308 16. Said Circuit Court erred in holding that the purpose of the Commission in its order of June 24, 1908, is to annul conditions upon which the trade centers of the country have grown up.

17. Said Circuit Court erred in holding that complainant carriers may predicate their right to relief from the order of the Commission upon allegations of injuries to shippers, based upon speculation.

18. Said Circuit Court erred in refusing to hold that the determination of what is a reasonable rate for the future is a question of fact upon which the action of the Commission is conclusive, in the absence of any allegation of confiscation.

19. Said Circuit Court erred, under the issues herein, in permitting the introduction of any testimony.

20. Said Circuit Court erred in not sustaining defendant's motion to strike from the files all the testimony herein.

Wherefore the Interstate Commerce Commission prays that the degree of said Circuit Court entered on the 13 day of September, 1909, be reversed and that said Circuit Court be ordered to enter a decree dismissing the petition or bill of complaint in the above-entitled cause by said complainants against said Interstate Commerce Commission.

EDWIN W. SIMS,

United States Attorney.

LUTHER M. WALTER,

Special Assistant to the United States Attorney.

(Endorsed:) Filed Sep. 13, 1909. H. S. Stoddard, Clerk.

2309 And on the same day, to-wit: on the thirteenth day of September, being one of the days of the Regular July Term of said court, 1909, in the record of proceedings thereof in said entitled cause before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaat, Circuit Judges for the Seventh Judicial Circuit, appears the following entry to-wit:

2310 *Order of September 13, 1909, Allowing Appeal of Interstate Commerce Commission.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.,
vs.

INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, the Atchison, Topeka and Santa Fe Railway Company, the Chicago and Alton Railroad Company, the Missouri Pacific Railway Company, the Missouri, Kansas and Texas Railway Company, the St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, White-law Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, Interveners as Co-complainants; Burnham, Hanna, Munger Dry Goods Company, et al., Interveners as Co-defendants.

In this cause, the Interstate Commerce Commission, by Edwin W. Sims, United States Attorney for the Northern District of Illinois, and Luther M. Walter, Special Assistant to the said United States Attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on
2311 the 13 day of September, 1909, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of \$2000, exclusive of costs, it is, therefore, ordered that said appeal be and the same is hereby granted and made returnable on the 12 day of November, 1909.

2312 And on to-wit: on September 13, 1909, there was filed in the clerk's office of said court in said entitled cause, a certain Petition for Appeal by defendant intervenors, in words and figures following to-wit:

2313

Petition for Appeal by Intervenor.

In the Circuit Court of the United States, Northern District of
Illinois, Eastern Division.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation,

VS.

THE INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, the Atchison, Topeka and Santa Fe Railway Company, the Chicago and Alton Railroad Company, the Missouri Pacific Railway Company, the Missouri, Kansas and Texas Railway Company, the St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hoveison Company, of Milwaukee, Roberts, Johnson, and Rand Shoe Company, Whitelaw Company, the Simmons, Hardware Company, of St. Louis, Sprague Warner & Company, Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, Intervenor as Co-Complainants; Burnham, Hanna, Munger Dry Goods Company, a Corporation; Swofford Brothers Dry Goods Company, a corporation; Smith-McCord-Townsend Dry Goods Company, a Corporation; William Barton, K. L. Barton and G. A. Barton, Co-partners as Barton Brothers; Maxwell-McClure-Fitts Dry Goods Company, a Corporation; F. A. Faxon and J. A. Gallagher, Co-partners as Faxon & Gallagher; Ellet-Kendall Shoe Company, a Corporation; McPike Drug Company, a Corporation; Evans-Smith Drug Company, a Corporation; Richards & Conover Hardware Company, a Corporation; Jay & King Hat Company, a Corporation; Woodson Smith Hat Company, a Corporation; Townley Metal Hardware Company, a Corporation; Emery, Bird, Thayer Dry Goods Company, a Corporation; John Taylor Dry Goods Company, a Corporation; George B. Peck Dry Goods Company, a Corporation; Jones Dry Goods Company, a Corporation; Webb-Freyschlag Mercantile Company, a Corporation; Kelly & Williams Druggists' Sundry Company, a Corporation; Baker & Lockwood Manufacturing Company, a Corporation; Campbell Glass and Paint Company, a Corporation; Cutler Paint and Glass Company, a corporation; Faeth Iron Company, a corporation; Joseph D. Havens Company, a Corporation; J. W. Jenkins Sons Music Company, a Corporation; Robert Keith Furniture and Carpet Company, a Corporation; Kansas City Paper House, a Corporation; Kansas City Roofing and Corrugating Company, a Corporation; Ryley-Wilson Grocer Company, a Corporation; Ridenour-Baker Grocery Company, a Corporation; Western Grocery Com-

pany, a Corporation; Jacoby Furniture Company, a Corporation; G. Bernheimer and E. I. Bernheimer and J. H. Bernheimer, partners under the firm name of G. Bernheimer Brothers & Company; Tootle, Wheeler & Motter Mercantile Company, a Corporation; John S. Brittain Dry Goods Company, a Corporation; Hundley Dry Goods Company, a Corporation; Richardson Dry Goods Company, a Corporation; M. E. Smith & Company, a Corporation; Byrne & Hammer Dry Goods Company, a Corporation; F. P. Kirkendall & Company, a Corporation; American Hand Sewed Shoe Company, a corporation; Hayward Brothers Shoe Company, a Corporation; D. J. O'Brien Company, a corporation; Thomas Kilpatrick & Company, a Corporation; H. A. Thompson and C. C. Belden, Co-partners as Thompson, Belden & Company; Orchard & Wilhelm Carpet Company, a Corporation; M. Levy, H. Cohn and M. Strausberger, Co-partners as Nebraska Clothing Company; Browning, King & Company, a Corporation; Berg-Swanson & Company, a Corporation; Miller, Stewart & Beaton Carpet and Furniture Company, a Corporation; E. E. Bruce & Company, a Corporation; the Bennett Company, a Corporation; Hayden Brothers, a Corporation; M. Spiesberger & Son Company, a Corporation, and J. L. Brandeis & Sons, a Corporation, Intervenors as Co-Defendants.

Petition for Appeal to United States Supreme Court by Defendant Intervenors.

The above named intervenors as co-defendants, to wit: Burnham, Hanna, Munger Dry Goods Company, a corporation; Swofford Brothers Dry Goods Company, a corporation; Smith-McCord-Townsend Dry Goods Company, a corporation; William Barton, 2315 K. L. Barton and G. A. Barton, co-partners as Barton Brothers; Maxwell-McClure-Fitts Dry Goods Company, a corporation; F. A. Faxon and J. A. Gallagher, co-partners as Faxon & Gallagher; Ellet-Kendall Shoe Company, a corporation; McPike Drug Company, a corporation; Evans-Smith Drug Company, a corporation; Richards & Conover Hardware Company, a corporation; Woodson Smith Hat Company, a corporation; Jay & King Hat Company, a corporation; Townley Metal and Hardware Company, a corporation; Emery Bird, Thayer Dry Goods Company, a corporation; John Taylor Dry Goods Company, a corporation; George B. Peck Dry Goods Company, a corporation; Jones Dry Goods Company, a corporation; Webb-Freyschlag Mercantile Company, a corporation; Kelly & Williams Druggists' Sundry Company, a corporation; Baker & Lockwood Manufacturing Company, a corporation; Campbell Glass & Paint Company, a corporation; Cutler Paint & Glass Company, a corporation; Faeth Iron Company, a corporation; Joseph D. Havens Company, a corporation; J. W. Jenkins' Sons Music Company, a corporation; Robert Keith Furniture & Carpet Company, a corporation; Kansas City Paper House, a corporation; Kansas City Roofing and Corrugating Company, a corporation; Ryley-Wilson Grocer Company, a corporation; Ridenour-Baker Grocery Company, a corpo-

ration; Western Grocer Company, a corporation; Jacoby Furniture Company, a corporation; G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer, partners under the firm name of G. Bernheimer Brothers & Co.; Tootle, Wheeler & Motter Mercantile Company, a corporation; John S. Brittain Dry Goods Company, a corporation; Hundley Dry Goods Company, a corporation; Richardson Dry Goods Company, a corporation; M. E. Smith & Co., a corporation; Byrne & Hammer Dry Goods Company, a corporation; F. P. Kirkendall & Company, a corporation; American Hand Sewed Shoe Company, a corporation; Hayward Brothers Shoe Company, a corporation; D. J. O'Brien Company, a corporation; Thomas Kilpatrick & Company, a corporation; H. A. Thompson and C. C. Belden, co-partners as Thompson, Belden & Company; Orchard & Wilhelm Carpet Company, a corporation; M. Levy, H. Cohn and M. Strausberger, co-partners as Nebraska Clothing Company; Browning, King & Company, a corporation; Berg-Swanson Company, a corporation; 2316 Miller, Stewart & Beaton Carpet and Furniture Company, a corporation; E. E. Bruce & Company, a corporation; The Bennett Company, a corporation; Hayden Brothers, a corporation; M. Spiesberger & Con Company, a corporation; and J. L. Brandeis & Sons, a corporation, conceiving themselves jointly and severally aggrieved by the decree made and entered on the 13 day of September, 1909, in the above entitled cause, do hereby pray an appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and pray that this, their appeal, may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the — day of September, 1909.

JOHN L. WEBSTER,
JOHN H. ATWOOD,

Solicitors for Above-Named Defendant Intervenors.

Appeal allowed as prayed this the 13 day of September, 1909.

P. S. G.

(Endorsed.) Filed Sep. 13, 1909. H. S. Stoddard, Clerk.

2317 And on the same day to-wit: on the thirteenth day of September, 1909, there was filed in the clerk's office of said court in said entitled cause a certain Assignment of Errors by the Co-Defendant Intervenors, in words and figures following to-wit:

2318

Assignment of Errors by Intervenor.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & North Western Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation,

vs.

THE INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, The St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hoveison Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company, Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, Intervenor as Co-Complainants.

Burnham, Hanna, Munger Dry Goods Company, a Corporation; Swofford Brothers Dry Goods Company, a Corporation; Smith-McCord-Townsend Dry Goods Company, a Corporation; William Barton, K. L. Barton and G. A. Barton, Co-Partners as Barton Brothers; Maxwell-McClure-Fitts Dry Goods Company, a Corporation; F. A. Faxon and J. A. Gallagher, Co-Partners as Faxon & Gallagher; Ellet-Kendall Shoe Company, a Corporation; McPike Drug Company, a Corporation; Evans-Smith Drug Company, a Corporation; Richards & Conover Hardware Company, a Corporation; Jay & King Hat Company, a Corporation; Woodson Smith Hat Company, a Corporation; Townley Metal Hard-

2319 ware Company, a Corporation; Emery, Bird, Thayer Dry Goods Company, a Corporation; John Taylor Dry Goods Company, a Corporation; George B. Peck Dry Goods Company, a Corporation; Jones Dry Goods Company, a Corporation; Webb-Freyschlag Mercantile Company, a Corporation; Kelly & Williams Druggists' Sundry Company, a Corporation; Baker & Lockwood Manufacturing Company, a Corporation; Campbell Glass and Paint Company, a Corporation; Cutler Paint and Glass Company, a Corporation; Faeth Iron Company, a Corporation; Joseph D. Havens Company, a Corporation; J. W. Jenkins' Sons Music Company, a Corporation; Robert Keith Furniture and Carpet Company, a Corporation; Kansas City Paper House, a Corporation; Kansas City Roofing and Corrugating Company, a Corporation;

Ryley-Wilson Grocer Company, a Corporation; Ridenour-Baker Grocery Company, a Corporation; Western Grocer Company, a Corporation; Jacoby Furniture Company, a Corporation; G. Bernheimer and E. I. Bernheimer and J. H. Bernheimer, Partners Under the Firm Name of G. Bernheimer Brothers & Company; Tootle, Wheeler & Motter Mercantile Company, a Corporation; John S. Brittain Dry Goods Company, a Corporation; Hundley Dry Goods Company, a Corporation; Richardson Dry Goods Company, a Corporation; M. E. Smith & Company, a Corporation; Byrne & Hammer Dry Goods Company, a Corporation; F. P. Kirkendall & Company, a Corporation; American Hand Sewed Shoe Company, a Corporation; Hayward Brothers Shoe Company, a Corporation; D. J. O'Brien Company, a Corporation; Thomas Kilpatrick & Company, a Corporation; H. A. Thompson and C. C. Belden, Co-Partners as Thompson Belden & Company; Orchard & Wilhelm Carpet Company, a Corporation; M. Levy, H. Cohn and M. Strausberger, Co-Partners as Nebraska Clothing Company; Browning, King & Company, a Corporation; Berg-Swanson Company, a Corporation; Miller, Stewart & Beaton Carpet and Furniture Company, a Corporation; E. E. Bruce & Company, a Corporation; The Bennett Company, a Corporation; Hayden Brothers, a Corporation; M. Spiesberger & Son Company, a Corporation, and J. L. Blandeis & Sons, a Corporation, Intervenors as Co-Defendants.

Assignment of Errors by Co-Defendant Intervenors.

The co-defendant intervenors, to wit: Burnham, Hanna, Munger Dry Goods Company, a corporation; Swofford Brothers Dry Goods Company, a corporation; Smith-McCord-Townsend Dry Goods Company, a corporation; William Barton, K. L. Barton and G. A. 2320 Barton, co-partners as Barton Brothers; Maxwell-McClure-Fitts Dry Goods Company, a corporation; F. A. Faxon and J. A. Gallagher, co-partners as Faxon & Gallagher; Ellet-Kendall Shoe Company, a corporation; McPike Drug Company, a corporation; Evans-Smith Drug Company, a corporation; Richards & Conover Hardward Company, a corporation; Woodson Smith Hat Company, a corporation; Jay & King Hat Company, a corporation; Townley Metal and Hardware Company, a corporation; Emery Bird, Thayer Dry Goods Company, a corporation; John Taylor Dry Goods Company, a corporation; George B. Peck Dry Goods Company, a corporation; Jones Dry Goods Company, a corporation; Webb-Frey-schlag Mercantile Company, a corporation; Kelly & Williams Drug-gists' Sundry Company, a corporation; Baker & Lockwood Manu-facturing Company, a corporation; Campbell Glass & Paint Com-pany, a corporation; Cutler Paint & Glass Company, a corporation; Faeth Iron Company, a corporation; Joseph D. Havens Company, a corporation; J. W. Jenkins' Sons Music Company, a corporation; Robert Keith Furniture & Carpet Company, a corporation; Kansas City Paper House, a corporation; Kansas City Roofing and Corru-gating Company, a corporation; Ryley-Wilson Grocer Company, a

corporation; Ridenour-Baker Grocery Company, a corporation; Western Grocer Company, a corporation; Jacoby Furniture Company, a corporation; G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer, partners under the firm name of G. Bernheimer Brothers & Co.; Toole, Wheeler & Motter Mercantile Company, a corporation; John S. Brittain Dry Goods Company, a corporation; Hundley Dry Goods Company, a corporation; Richardson Dry Goods Company, a corporation; M. E. Smith & Co., a corporation; Byrne & Hammer Dry Goods Company, a corporation; F. P. Kirkendall & Company, a corporation; American Hand Sewed Shoe Company, a corporation; Hayward Brothers Shoe Company, a corporation; D. J. O'Brien Company, a corporation; Thomas Kilpatrick & Company, a corporation; H. A. Thompson and C. C. Belden, co-partners as Thompson, Belden & Company; Orchard & Wilhelm Carpet Company, a corporation; M. Levy, H. Cohn and M. Strausberger, co-partners as Nebraska Clothing Company; Browning, King & 2321 & Company, a corporation; Berg-Swanson Company, a corporation; Miller, Stewart & Beaton Carpet and Furniture Company, a corporation; E. E. Bruce & Company, a corporation; The Bennett Company, a corporation; Hayden Brothers, a corporation; M. Spiesberger & Son Company, a corporation; and J. L. Brandeis & Sons, a corporation, pray an appeal from the final decree of this Court in the above entitled cause, to the Supreme Court of the United States, and file this, their assignment of errors, as follows, to wit:

I.

That the Court erred in entering the said order and decree setting aside and annulling the order of the Interstate Commerce Commission of June 24, 1908, which in the order and decree of this Court is more particularly set forth.

II.

That said Court erred in enjoining and restraining the Interstate Commerce Commission from enforcing its said order of June 24, 1908, reducing the rates between the Mississippi River crossings, East St. Louis, to East Dubuque, Illinois, inclusive, and the Missouri River cities, Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, on business originating at the Atlantic seaboard and destined to said Missouri River crossings, to the following scale of rates on the first five classes, to the following cents per hundred pounds:

- First class, from 60 to 51 cents;
- Second class, from 45 to 38 cents;
- Third class, from 35 to 30 cents;
- Fourth class, from 27 to 23 cents;
- Fifth class, from 22 to 19 cents;

which said order of the Interstate Commerce Commission reducing said rates is in said decree more particularly set forth.

III.

The Court erred in finding as set forth in the majority opinion of the Court, that the Interstate Commerce Commission was without power or authority under the Interstate Commerce Act to make the said order of June 24, 1908, complained of.

IV.

2322 The said order, judgment and decree of the Court is erroneous in that it should have found that the said order of the Interstate Commerce Commission of June 24, 1908, was properly and regularly made and that the Interstate Commerce Commission was legally and duly empowered under the Interstate Commerce Act to make the said order.

V.

The Court should have found that the said order of the Interstate Commerce Commission of June 24, 1908, did not produce any undue or unreasonable discrimination against any person, company or locality, or give any undue or unreasonable preference or advantage to any person, company or locality.

VI.

The Court should have found as a matter of law, that under the pleadings and facts proven, that the complainant railroad companies did not have such a direct interest in the questions involved as to give them a standing in a court of equity to insist that the said order of the Interstate Commerce Commission of June 24, 1908, produced any undue or unreasonable discrimination in favor of any person, company, or locality, or that said order gave any undue or unreasonable preference to any person, company or locality.

VII.

The Court should have found that the rates established by the Interstate Commerce Commission in its order of June 24, 1908, between the Mississippi River crossings and the Missouri River Cities on business originating in the Atlantic seaboard territory, and consigned to the Missouri River cities, Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, were and are just and reasonable rates, and would yield to the complainant railroad companies fair and reasonable compensation for the service to be performed, and should have denied the injunction prayed for by the complainants.

JOHN L. WEBSTER,

JOHN H. ATWOOD,

Solicitors for above named defendant intervenors.

2323 And on the same day to-wit: on the thirteenth day of September, 1909, being one of the days of the Regular July Term of said court, 1909, in the record of proceedings therein in said entitled cause, before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaat, Circuit Judges for the Seventh Judicial Circuit, appears the following entry, to-wit:

2324 *Order of September 13, 1909, Allowing Appeal of Intervenors.*

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.,

vs.

INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Missouri Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, The St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, Intervenors as Co-complainants; Burnham, Hanna, Munger Dry Goods Company, et al., Intervenors as Co-defendants.

In this cause, the Burnham, Hanna, Munger Dry Goods Company, et al, defendant intervenors, by their solicitors, John L. Webster and John H. Atwood, having made their application in writing for an appeal from the decree therein, rendered on the 13th day of September, 1909, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of \$2000, exclusive of costs, it is, therefore, ordered that said appeal be and the same is hereby granted and made returnable on the 12th day of November, 1909.

2325

Praeipie for Transcript of Record.

In the Circuit Court of the United States, for the Northern District
of Illinois, Eastern Division.

No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, et al.,
Complainants,

vs.

INTERSTATE COMMERCE COMMISSION.

Praeipie for Record.

To the Clerk of the above entitled court:

You will please prepare a transcript of the record in the above entitled cause, to be filed in the office of the Clerk of the Supreme Court of the United States, upon the appeal of Burnham-Hanna-Munger Dry Goods Co., intervenors as co-defendants, and include in said transcript the following pleadings, proceedings and papers on file or of record to-wit:

Bill of Complaint and exhibits, filed October 17, 1908.

Chancery Subpoena issued October 17, 1908, with Marshal's return thereon endorsed.

Appearance of defendant, Interstate Commerce Commission, filed October 24, 1908.

Certificate of Attorney General, filed October 26, 1908.

Answer of defendant, Interstate Commerce Commission, filed October 30, 1908.

Order of October 30, 1908.

Order of October 31, 1908.

Order of November 6, 1908.

Order of November 6, 1908.

Intervening Petition of Illinois Central Railroad Co. et al, filed November 6, 1908.

Replication to Answer, filed November 9, 1908.

Order of December 1, 1908.

Intervening petition of Burnham-Hanna-Munger Dry Goods Co. et al, filed December 1, 1908.

2326 Answer of Defendant, Interstate Commerce Commission, to Intervening petition of I. C. R. R. Co. et al, filed December 14, 1908.

Motion to dissolve temporary injunction, filed March 22, 1909.

Order of April 20, 1909.

Order of April 20, 1909.

Intervening Petition of A. J. Lindemann et al, filed April, 20, 1909.

Report of Special Examiner and Exhibits thereto attached.

Motion of defendant, Interstate Commerce Commission, to dismiss, filed June 23, 1909.

Motion of Defendant to dismiss the intervening petition of I. C. R. R. Co. et al., filed June 23, 1909.

Motion of defendant to dismiss intervening petition of Burnham-Hanna-Munger Dry Goods Co. et al, filed June 23, 1909.

Motion of defendant to dismiss the Intervening petition of A. J. Lindemann, et al, filed June 23, 1909.

Motion of the defendant to strike out certain testimony, filed June 23, 1909.

Motion of defendant for certain findings, filed June 23, 1909.

Order of June 23, 1909.

Opinion, filed August 24, 1909.

Decree entered September 13, 1909.

Petitions for appeal, filed September 13, 1909.

Assignments of Errors filed September 13, 1909.

Orders allowing appeal, entered September 13, 1909.

LUTHER M. WALTER,

Sol'r for Def't.

JOHN H. ATWOOD,

Sol'r for Def't, Intervenors.

(Endorsed:) Filed Sept. 20, 1909. H. S. Stoddard, Clerk.

2327 NORTHERN DISTRICT OF ILLINOIS,

Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete Transcript of the proceedings had of Record, made in accordance with Præcipe filed in said Court on the Twentieth day of September A. D. 1909, in the cause wherein Chicago, Rock Island and Pacific Railway Company, et al., are the Complainants and Interstate Commerce Commission is the Defendant, as the same appears from the original records and files thereof now remaining in my custody and control.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this eighth day of October A. D. 1909.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

H. H. NODDARE, *Clerk.*

2328

Citation.

UNITED STATES OF AMERICA, 88:

The President of the United States of America to Chicago, Rock Island & Pacific Railway Company, a corporation; Chicago, Burlington & Quincy Railroad Company, a corporation; Chicago, Milwaukee & St. Paul Railway Company, a corporation; Chicago & Northwestern Railway Company, a corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a corporation; Illinois Central Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; The Chicago and Alton Railroad Company; The Missouri Pacific Railway Company; The Missouri, Kansas and Texas Railway Company; The St. Louis and San Francisco Railroad Company; A. J. Lindemann, and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company; Whitelaw Company; the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company; Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland; and Interstate Commerce Commission:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, within 60 days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, and filed in the office of the clerk of said court, on the 13 day of September, 1909, in a cause wherein Burnham, Hanna Munger Dry Goods Company, a corporation; Swofford Brothers Dry Goods Company, a corporation; Smith-McCord-Townsend Dry Goods Company, a corporation; William Barton, K. L. Barton and G. A. Barton, co-partners
 2329 as Barton Brothers Maxwell-McClure-Fitts Dry Goods Company, a corporation; F. A. Faxon and J. A. Gallagher, co-partners as Faxon & Gallagher; Ellet-Kendall Shoe Company, a corporation; McPike Drug Company, a corporation; Evans-Smith Drug Company, a corporation; Richards & Conover Hardware Company, a corporation; Woodson Smith Hat Company, a corporation; Jay & King Hat Company, a corporation; Townley Metal Hardware Company, a corporation; Emery, Bird, Thayer Dry Goods Company, a corporation; John Taylor Dry Goods Company, a corporation; George B. Peck Dry Goods Company, a corporation; Jones Dry Goods Company, a corporation; Webb-Freyschlag Mercantile Company, a corporation; Kelly & Williams Druggists Sundry Company, a corporation; Baker & Lockwood Manufacturing Company, a corporation; Campbell Glass and Paint Company, a corporation; Cutler Paint and Glass Company, a corporation; Faeth Iron Company, a corporation; Joseph D. Havens Company, a corporation; J. W. Jenkins' Sons Music Company, a corporation; Robert Keith Furniture and Carpet Company, a corporation; Kansas City Paper

House, a corporation; Kansas City Roofing and Corrugating Company, a corporation; Ryley-Wilson Grocer Company, a corporation; Rodenour-Baker Grocery Company, a corporation; Western Grocer Company, a corporation; Jacoby Furniture Company, a corporation; G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer, partners under the firm name of G. Bernheimer Brothers & Company; Tootle, Wheeler & Motter Mercantile Company, a corporation; John S. Brittain Dry Goods Company, a corporation; Hundley Dry Goods Company, a corporation; Richardson Dry Goods Company, a corporation; M. E. Smith & Company, a corporation; Byrne & Hammer Dry Goods Company, a corporation; F. P. Kirkendall & Company, a corporation; American Hand Sewed Shoe Company, a corporation; Hayward Brothers Shoe Company, a corporation; D. J. O'Brien Company, a corporation; Thomas Kilpatrick & Company, a corporation; H. A. Thompson and C. C. Belden, co-
 2330 partners as Thompson, Belden & Company; Orchard & Wilhelm Carpet Company, a corporation; M. Levy, H. Cohn and M. Strausberger, co-partners as Nebraska Clothing Company; Brown-
 ing, King & Company, a corporation; Berg-Swanson Company, a corporation; Miller, Stewart & Beaton Carpet and Furniture Company, a corporation; E. E. Bruce & Company, a corporation; The Bennett Company, a corporation; Hayden Brothers, a corporation; M. Spiesberger & Son Company, a corporation; and J. L. Brandeis & Sons, a corporation, are appellants, to show cause if any there be, why the decree rendered in the said cause in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this, the 13 day of September, 1909.

P. S. GROSSCUP, *Judge.*

Service of a copy of the within citation is hereby admitted, this, the 18th day of September, 1909.

WILLIAM D. McHUGH,
*Solicitor for Complainants and Intervening
 Co-Complainants.*

LUTHER M. WALTER,
Solicitor for Def't, Int. Com. Com.

2331 [Endorsed:] #29,247. In chancery. United States Circuit Court, Northern District of Illinois, Eastern Division. Chicago, Rock Island and Pacific Railway Company et al., Appellees, vs. Burnham, Hanna, Munger Dry Goods Company, a corporation, et al., Appellants. Citation. Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Sep. 20, 1909. H. S. Stoddard, Clerk. John L. Webster and John H. Atwood, Solicitors for Appellants.

2332 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 29247.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a Corporation; Chicago, Burlington & Quincy Railroad Company, a Corporation; Chicago, Milwaukee & St. Paul Railway Company, a Corporation; Chicago & Northwestern Railway Company, a Corporation; Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, a Corporation, et al.

VS.

INTERSTATE COMMERCE COMMISSION.

Illinois Central Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Missouri Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, The St. Louis and San Francisco Railroad Company, A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, The Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit, and Sherwin-Williams Company, of Cleveland, Interveners as Co-complainants; Burnham, Hanna, Munger Dry Goods Company et al., Interveners as Co-defendants.

Citation on Appeal.

The President of the United States to the Chicago, Rock Island & Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Northwestern Railway Company, Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great Western Railway Company, or to William D. McHugh and Colin C. H. Fyffe, their Solicitors of record; to A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company, Carson, Pirie, Scott & Company, of Chicago; Kemiweld Can Company, Parke, Davis & Company, of Detroit, and Sherwin-Williams Company, of Cleveland, interveners as co-complainants, or to William D. McHugh and Colin C. H. Fyffe, their solicitors of record, and to Burnham, Hanna, Munger Dry Goods Company, a corporation, Swofford Brothers Dry Goods Company, a corporation, Smith-McCord-Townsend Dry Goods Company, a corporation, William Barton, K. L. Barton and G. A. Barton, co-partners as Barton Brothers, Maxwell-McClure-Fitts Dry Goods Company, a corporation, F. A. Faxon and J. A. Gallagher, co-partners as Faxon & Gallagher, Ellet-Kendall Shoe Company, a corporation,

McPike Drug Company, a corporation, Evans-Smith Drug Company, a corporation, Richards & Conover Hardware Company, a corporation, Woodson Smith Hat Company, a corporation, Jay & King Hat Company, a corporation, Townley Metal and Hardware Company, a corporation, Emery, Bird, Thayer Dry Goods Company, a corporation, John Taylor Dry Goods Company, a corporation, George B. Peck Dry Goods Company, a corporation, Jones Dry Goods Company, a corporation, Webb-Freyschlag Mercantile Company, a corporation, Kelly & Williams Druggists' Sundry Company, a corporation, Baker & Lockwood Manufacturing Company, a corporation, Campbell Glass and Paint Company, a corporation, Cutler Paint and Glass Company, a corporation, Faeth Iron Company, a corporation, Joseph D. Havens Company, a corporation, J. W. Jenkins' Sons Music Company, a corporation, Robert Keith Furniture and Carpet Company, a corporation, Kansas City Paper House, a corporation, Kansas City Roofing and Corrugating Company, a corporation, Ryley-Wilson Grocer Company, a corporation, Ridenour-Baker Grocery Company, a corporation, Western Grocer Company, a corporation, Jacoby Furniture Company, a corporation, G. Bernheimer and I. E. Bernheimer and J. H. Bernheimer, partners under the firm name of G. Bernheimer Brothers & Company, Tootle, Wheeler & Motter

2334 Mercantile Company, a corporation, John S. Brittain Dry Goods Company, a corporation, Hundley Dry Goods Company, a corporation, Richardson Dry Goods Company, a corporation, M. E. Smith & Company, a corporation, Byrne & Hammer Dry Goods Company, a corporation, F. P. Kirkendall & Company, a corporation, American Hand Sewed Shoe Company, a corporation, Hayward Brothers Shoe Company, a corporation, D. J. O'Brien Company, a corporation, Thomas Kilpatrick & Company, a corporation, H. A. Thompson and C. C. Belden, co-partners as Thompson, Belden & Company, Orchard & Wilhelm Carpet Company, a corporation, M. Levy, H. Cohn and M. Strausbeger, co-partners as Nebraska Clothing Company, Browning, King & Company, a corporation, Berg-Swanson Company, a corporation, Miller, Stewart & Beaton Carpet and Furniture Company, a corporation, E. E. Bruce & Company, a corporation, The Bennett Company, a corporation, Hayden Brothers, a corporation, M. Spiesberger & Son Company, a corporation, and J. L. Brandeis & Sons, a corporation, or to John H. Atwood and John H. Webster, their solicitors of record, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within sixty days from the date hereof, pursuant to the appeal sued out and filed in the Clerk's office in the United States Circuit Court for the Northern District of Illinois, Eastern Division, in the cause wherein the Interstate Commerce Commission was defendant and said Chicago, Rock Island & Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Northwestern Railway Company, Alpheus B. Stickney and Charles H. F. Smith, Receivers of Chicago Great

Western Railway Company, were complainants; A. J. Lindemann and Hovieson Company, of Milwaukee; Roberts, Johnson and Rand Shoe Company, Whitelaw Company, the Simmons Hardware Company, of St. Louis; Sprague, Warner & Company; Carson, Pirie, Scott & Company, of Chicago, Kemiwald Can Company, Parke, Davis & Company, of Detroit; and Sherwin-Williams Company, of Cleveland, interveners as co-complainants, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done in that
2335 behalf.

Witness the Honorable Peter S. Grosscup, Francis E. Baker and Christian C. Kohlsaas, United States Circuit Judges of said Seventh Judicial Circuit, this 13 day of September, in the year of our Lord One thousand nine hundred and nine.

P. S. GROSSCUP,
FRANCIS E. BAKER,
C. C. KOHLSAAT,
Circuit Judges.

Service of a copy of the within citation is hereby admitted this 18th day of September, 1909.

WILLIAM D. McHUGH,
Solicitor for Complainants and Intervening Co-Complainants.

Service of this citation accepted in behalf of all Intervening Co-defendants by

JNO. L. WEBSTER AND
JOHN H. ATWOOD,
Solicitors for Intervenors as Co-Defendants.

September 18, 1909.

2336 [Endorsed:] 29247. Circuit Court of the United States,
Northern District of Illinois, Eastern Division. Filed Sep. 20,
1909. H. S. Stoddard, Clerk. Citation.

(Here follows Joint Tariff Sheet, marked pages 2337-2375.)

2376 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the certain Exhibit marked Ex. "A" to testimony before Commission, filed in said Court on the twenty-third day of June, 1909, in the cause entitled Chicago, Rock Island and Pacific Railway Company, et al. vs. Interstate Commerce Commission, as the same appears from the original thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Chicago, in said District, this twenty-first day of October, 1909.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

H. S. STODDARD, *Clerk,*
By JOHN H. H. JAMAR,
Chief Deputy Clerk.

Endorsed on cover: File No. 21,889. N. Illinois C. C. U. S. Term No. 663. The Interstate Commerce Commission, appellant, vs. The Chicago, Rock Island & Pacific Railway Company et al. File No. 21,890. Term No. 664. Burnham, Hanna, Munger Dry Goods Company et al., appellants, vs. Chicago, Rock Island & Pacific Railway Company et al. Filed November 5th, 1909. (21,889, 21,890.)